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THE JURISDICTION, PROCESS, PRACTICE,

AND

MODE OF PLEADING

IN ORDINARY ACTIONS

IN THE

Mayor's Court, London.

(COMMONLY CALLED THE "LORD MAYOR'S COURT.")

Founded on BRANDON.

By GEORGE CANDY,

OF THE INNER TEMPLE, BARRISTER-AT-LAW.

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PREFACE.

A VERY few words will explain the *raison d'être* of this little book. Mr. Brandon's "Epitome" of his Notes of Practice has been for some time out of print. Mr. Brandon, as one of the Judges of the Mayor's Court, not unnaturally feels that it would be inconsistent with the position he holds to publish a Practice of his own Court. In these circumstances he has very kindly accorded to the writer his permission to make free use of the materials to be found in the "Epitome," and of that permission every advantage has been taken. At the same time, although the book is—and is stated to be—"founded on" Mr. Brandon's work, it is not a new edition of Brandon. Since the Judicature Acts several cases have been decided in the Court of Appeal and in the High Court of Justice which have materially affected the jurisdiction and status of the Mayor's Court. It is most desirable, in the interest of the large and daily increasing number of suitors who find the local Court a convenient tribunal for settling their disputes,* that the chaos of decisions touching the jurisdiction should, if possible, be reduced to something like order in a systematic treatise. In attempting the execution of this task the writer has been greatly assisted by several learned friends. He is much indebted to the learned Registrar of the Court for the readiness with which

* The number of actions entered in the Court in 1877 was 10,873, the total amount sued for being £250,684, and the total amount of fees taken by the Court being £5,860. These figures need no commentary.

any information asked for by the writer has been supplied. Some useful hints on points of practice have been furnished by the experience of Mr. R. A. M'Call (of the Northern Circuit); while Mr. J. F. Torr and Mr. Prosser (of the South-Eastern Circuit) have, by verifying the references to cases, &c., contributed to secure such claims to confidence as the book possesses.

The total absence of all Forms and Precedents from a book on the practice of a Civil Court may by some be regarded as a startling departure from immemorial custom, but is to be explained by a desire not to overload a light craft with commodities that may be had by any one for the asking (or for a small fee) at the Office of the Court or at a law stationer's.

G. C.

3, Harcourt Buildings, Temple,
February, 1879.

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ADDENDA ET ERRATA.

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1, note (*b*) for "157" read "CLVII."

2, line 9 from bottom, add—"For the provisions of the Order in Council under which this appointment was made, see Appendix (F)."

50, line 13 from bottom, *dele* "to."

61, line 12, add—"The similar provision in the Schedule to the Borough and Local Courts of Record Act, 1872, modified the M. C. L. P. Act by making the removal conditional on the amount payable under the judgment or order being not less than £20."

87, line 12, add—"Since 1873, with regard to Mayor's Court judgments and orders for sums not exceeding £20, the Court has had the power to send a writ or precept for the recovery of the same to the Registrar of any County Court within whose jurisdiction the execution debtor has goods. See Appendix (F)."

89, line 12, add—"Where the Judge is not satisfied by the evidence that either plaintiff or defendant is entitled to judgment, he may order a nonsuit, and in every case whatever may order a new trial on such terms as he thinks reasonable, staying the proceedings in the meantime."

91, note (*h*), add—"34 L. T. N. S. 691; 25 W. R. 115."

103, line 15 (marginal note), for "section 18" read "section 48."

106, line 11, add—"Omitting the words 'after plea pleaded,' this section was substantially re-enacted by clause 12 of the Schedule to 35 & 36 Vict. c. 86."

109, last line, add—"See *ante*, p. 61 (Addenda)."

128, note (*o*), add—"The restriction as to *locality* was removed by the second clause of the Schedule to 35 & 36 Vict. c. 86, while the discretion as to *time* was modified by the addition of the words 'within such time as is permitted by the rules of the Court.'"

129, line 4, add—"Since the 35 & 36 Vict. c. 86, the signature of the person before whom the affidavit is sworn need not be verified. See Appendix (F)."

INTRODUCTORY.

THE MAYOR'S COURT OF LONDON—popularly but erroneously (*a*) called the Lord Mayor's Court—is one of her Majesty's Courts of Record. Its full style and title, according to the statute which was passed for the purpose (*inter alia*) of making it more efficient by extending its powers and simplifying its practice and mode of procedure (*b*), is the Court of our Sovereign Lady the Queen, holden before the Lord Mayor and Aldermen in the Chamber of the Guildhall of the City of London (*c*).

A Court of Record.

After a long and somewhat acrimonious controversy, in the course of which—if Lord Westbury is to be believed (*d*)—"attempts were made silently to extend its jurisdiction beyond its proper and just limits," it was finally settled by the decision of the House of

An Inferior Court of local jurisdiction.

(*a*) Apart from the objection that it is historically misleading (there having been a Mayor's Court centuries before there was a Lord Mayor), it is confusing to the popular mind to call by the name of "the Lord Mayor's Court" a Court with which in practice the Lord Mayor has nothing to do, the only Court which in reality deserves the name being the justice-room at the Mansion House.

(*b*) 20 & 21 Vict. c. 157. Preamble.

(*c*) *Ibid.*, s. 54.

(*d*) See *Mayor, &c., of London v. Cox*, L. R. 2 H. L. C. 239; at p. 225, 36 L. J. (N. S.) Ex. 225.

Mayor, &c., of London v. Cox. (July, 1867.)

Lords in the *Mayor, &c., of London* v. *Cox* (*e*), that the Mayor's Court is now—what it was no doubt originally—a municipal Court with a purely local jurisdiction, enlarged, it is true, to some extent by legislation, but with no general jurisdiction either created or impliedly recognised by the statute of 1857 (*f*).

The Judges.

In theory, it is the Lord Mayor and Aldermen of the City before whom the Court is holden in the "outer chamber of the Guildhall," but by immemorial custom they are represented—so far as this Court is concerned—by the Recorder of the City, whose place, in case of unavoidable absence, is supplied by the Common Serjeant or his deputy, who must be a barrister of not less than seven years' standing, and who is appointed either by the Recorder or Common Serjeant, or by the Common Council (*g*). The necessity for a permanent official to sit as judge in the absence of the Recorder and the Common Serjeant was recognised in 1873 by the appointment of Mr. Brandon to the office of Assistant Judge.

The Registrar.

The Registrar of the Court has all the powers of the judge as regards the holding of Courts and the transaction of all business of the Court, except the trial of issues in law or in fact (*h*). As every day is, by the custom of the City, a Court day, the Registrar or the Deputy Registrar, whose powers are co-extensive with those of the Registrar, sits daily at the office of the Court in Church Passage, Guildhall, for the transaction

(*e*) L. R. 2 H. L. C. 239; 36 L. J. Ex. 225.

(*f*) *Per* Willes, J., in *Mayor, &c., of London* v. *Cox*, at pp. 264—5.

(*g*) M. C. L. P. Act, s. 43.

(*h*) M. C. L. P. Act, s. 41.

of such business as in the High Court of Justice is transacted in Chambers by the Judges, the Masters, and the Chief Clerks.

The Serjeant-at-Mace is to the Mayor's Court what the Sheriff is to the High Court of Justice or the High Bailiff to a County Court. It is his duty to serve the proceedings in foreign attachments and generally to execute the process of the Court. The Serjeant-at-Mace.

Since the year 1852, when the lucrative monopolies (*i*) enjoyed by the privileged pleaders and attorneys of the Mayor's Court were abolished by the Court of Aldermen, this Court has been open to all duly qualified members of either branch of the profession. Solicitors have equal right of audience with the Bar in all collateral matters, but have no right to be heard on the trial of issues in law or fact in open Court; where the parties must appear in person or by counsel. No solicitor who has not been duly admitted to practise in the Mayor's Court upon compliance with the prescribed formalities (*k*) is competent to enter an action or an appearance, or, indeed, to take any proceeding whatever on behalf of a client in his own name; and any proceeding taken by or in the name of a solicitor not on the Court Roll may be set aside or stayed by order. Every solicitor entered on the Roll is, it needs scarcely be added, subject to the control which Counsel and solicitors.

(*i*) One of the privileged attorneys in 1845 paid £9000 as the price of his office. See the argument of R. Gurney in *Reg.* v. *Mayor, &c., of London*, 16 L. J. Q. B. 185. Those were the days when no "foreign counsel" could be heard in the Mayor's Court in any cause until all four City Counsel (or Common Pleaders) had been retained.

(*k*) Signing the Court Roll and payment of five shillings.

is exercised by every Court of Record over its own officers.

The jury. In the absence of any agreement between the parties to an action to try before a special jury or before the Court without a jury (*l*), every action when ripe for trial is sent before a common jury of twelve, who are drawn from the sheriff's books kept by the Secondary of the City. A special jury, whose services either party may secure on application to the Court, is summoned by the Serjeant-at-Mace, who obtains the panel from the Secondary; and the successful party who desires to recover from his opponent the costs of a special jury must, at the close of the trial, apply for the certificate of the presiding judge in conformity with the practice in the High Court. The fine for non-attendance without reasonable excuse of a juror who has been duly summoned is—up to the maximum of five pounds—in the discretion of the Court, and—in case of nonpayment in obedience to the directions of the Court—may be levied in the manner provided by the 5 & 6 Will. 4, c. 76, s. 121 (*m*). The remuneration of a special juryman is at the rate of a guinea a day, while that of a common juryman is at the rate of twopence per case.

(*l*) As to power of judge to try issues of fact by consent, see M. C. L. P. Act, s. 51.

(*m*) M. C. L. P. Act, s. 49.

PART I.

THE ORDINARY JURISDICTION OF THE MAYOR'S COURT.

Status of Mayor's Court finally settled by House of Lords.

IT has been already stated (*a*) that, since the judgment of the House of Lords in the *Mayor, &c., of London* v. *Cox* (*b*), no claim to a general jurisdiction, such as is exercised by the Superior Courts of Law and Equity, or (to use the term which now embraces them all) the High Court of Justice, can be set up on behalf of the Mayor's Court. Whether that decision was historically right or wrong, satisfactory or unsatisfactory; whether it was or was not virtually the judgment of Willes, J. (*c*), adopted by Lord Chancellor Cranworth and by Ex-Lord Chancellor Westbury; whether the able and distinguished counsel (*d*) who held briefs for the Corporation did or did not exhaust the learning of the subject in support of their client's pretensions;—all these are

(*a*) *Ante*, p. 1.

(*b*) L. R. 2 H. L. C. 239; 36 L. J. Ex. 225.

(*c*) It is curious that the *opinion* of Willes, J., should have been spoken of by more than one learned judge as a "judgment." See *Cooke* v. *Gill*, L. R. 8 C. P. at p. 115.

(*d*) Sir Fitzroy Kelly, Q.C., and Mr. C. E. Pollock, Q.C.

questions which it is idle, not to say impertinent, to discuss at the present day. The issue in which the status of the Mayor's Court was involved was then formally raised for the first time, and, after a most elaborate discussion, was decided against the Corporation, at whose instance it had been raised.

The Mayor's Court subject to control of High Court of Justice.

The consideration of this important question, then, starts from the incontrovertible proposition that this Court is a local court of limited jurisdiction (*e*), and subject, therefore, like every other Inferior Court, to the controlling jurisdiction of the High Court of Justice. The next question to be dealt with is, how far that local jurisdiction has been from time to time, either expressly or in effect, enlarged by legislation.

How far its local jurisdiction is extended by statute.

(I.) M. C. L. P. Act, 1857. (20 & 21 Vict. c. 157.) An Act to extend powers of Mayor's Court.

It was one of the objects of the Mayor's Court of London Procedure Act, 1857, to make this Court more efficient by *extending its powers* (*f*). It would, therefore, be reasonable to look for, among the provisions contained in the statute, at least one by which that object was—or was intended to be—carried into effect. The sections of the Act which are pointed at by Willes, J., in advising the House of Lords (*g*), as having this effect, are sections 13, 32, 38, and 48. To those sections, accordingly, attention will be directed in the course of this inquiry (*h*).

Sections of Act referred to by Willes, J., as carrying out object.

There are, however, two sections in particular which

(*e*) As such it has, at common law, no jurisdiction to try any cause of action which in any material part arose outside its local boundaries. See 1 Ch. Pl., 7th ed., 287, cited by Bovill, C. J., in his judgment in *Cooke* v. *Gill*, L. R. 8 C. P. 107, at p. 114. Compare Com. Dig. *sub. tit.* "Courts."

(*f*) Preamble. Compare language of the title.

(*g*) *Mayor, &c., of London* v. *Cox*, at p. 258 of the Law Report.

(*h*) See *post*, p. 59—61.

for several reasons deserve to be considered first, that is to say, the 12th and the 15th. To be rightly understood, they must be construed together; and it is because they have been regarded independently one of the other that they have been, as will presently appear, a fruitful source of litigation, of ill temper, and of worse law. Before discussing what Parliament intended to effect by means of the provisions contained in these two sections, it may be worth while to examine briefly the language in which Parliament has thought fit to express that intention.

Sections 12 and 15 must be read together.

The 12th section is as follows:—

"Where the debt or damage claimed in any action shall not exceed the sum of £50, no plea to the jurisdiction shall be allowed, provided the defendant or one of the defendants shall dwell or carry on business within the City of London or the liberties thereof at the time of the action brought, or provided the defendant or one of the defendants shall have dwelt or carried on business at some time within six months next before the time of the action brought, or if the cause of action, either wholly or in part, arose therein."

Section 12.

By section 15 it is enacted that—

"No defendant shall be permitted to object to the jurisdiction of the Court in or by any proceeding whatsoever, except by plea."

Section 15.

Looking at these two sections side by side, with our minds unprejudiced by the numerous decided cases, but not forgetting that the framers of the local Act intended, while leaving the Mayor's Court (what they found it) a Court of limited jurisdiction, to enlarge its

Effect of the two sections read together.

Section 15.

powers as such, what are we to pronounce as to their conjoint effect? After the passing of the Act, no defendant is any longer to be permitted to object to—that is, to challenge—the jurisdiction of the Court in or by any proceeding whatsoever, except by plea. In order to measure the disabling force of this section, it is necessary to look back to the procedure of the Mayor's Court at the time the Act was passed, and find what were the "proceedings" (other than a plea) in or by which a defendant in the Mayor's Court was at that time "permitted to object to the jurisdiction of the Court." Before the Act, a defendant might give the question of jurisdiction the go-by in his defence, and, having allowed the case to go to trial on its merits, might take the plaintiff by surprise by asking for a non-suit on the ground of want of jurisdiction. That was one "proceeding" by which he was to be no longer permitted to raise the question of jurisdiction. Another proceeding no longer permissible for this purpose was moving in arrest of judgment. The same remark applies to demurrers and proceedings in error, &c. (*i*). Those "proceedings" are not done away with altogether by the 15th section, but the practice and mode of procedure of the Court are simplified, in accordance with the intention of those who framed the Act (*j*), by disabling the defendant in any action from taking advantage of any one of them as a means of raising the question of jurisdiction (*k*).

(*i*) See the argument for the defendant in *Jacobs* v. *Brett*, L. R. 20 Eq. 1, at p. 3.

(*j*) Preamble.

(*k*) *Per* Willes, J., at p. 259 of *Mayor, &c., of London* v. *Cox*, L. R. 2 H. L. C.

Such being the effect of the 15th section on every person sued in the Mayor's Court, what is the operation of the 12th section? That section enacts that in every claim not exceeding £50—so that what follows has no application to claims above that amount—provided that one of two states of fact is found to exist, the one relating to the person sued, the other to the ground of the complaint against him—no plea to the jurisdiction shall in future be allowed. So that, while a person sued on a claim exceeding £50 is not to be permitted to challenge the jurisdiction "in or by any proceeding whatsoever except by plea" (it does not say *otherwise than by plea*), every person sued on a claim not exceeding £50 is further forbidden to resort to that mode of objection. The one section takes away from *all* defendants in the Mayor's Court the right of objecting by any proceeding whatsoever save one; the other section takes away from such defendants as are sued under the conditions therein set forth the right of objecting by any proceeding whatsoever. So that, in cases within the terms of section 12, the Mayor's Court is absolutely precluded from all inquiry into the question of its own jurisdiction, because the defendant has no means whatever of raising the question in that Court. Did the Legislature really intend that a jurisdiction, which, under given conditions, was not to be directly challenged by a defendant, might nevertheless be impeached under the same conditions by anyone not a party to the action, and that a local court, which by the statute itself was prevented from learning its own want of jurisdiction, might nevertheless be prohibited by a

Meaning and effect of section 12.

Does not apply to claims over £50.

Section 15.

Section 12.

Superior Court? Did not Parliament rather intend, in cases within the terms of section 12, to take away from the Superior Courts the exercise of their inherent right of prohibition, and, by so doing, in effect to confer on the Mayor's Court an absolute jurisdiction to try claims coming within the terms of that section? The Court of Appeal has expressly decided that such must have been the intention of Parliament.

Hawes v. *Paveley.* (May, 1876.)

The case of *Hawes* v. *Paveley* (*l*) marks an epoch in the modern history of the Mayor's Court, and for that reason deserves a careful examination in these pages.

Facts of that case

The facts were these:—The defendant had accepted a bill for £45 outside the City, but made it payable in the City, where he carried on business. The bill having been presented and dishonoured in the City, thereupon the acceptor was sued for the amount in the Mayor's Court. *Primâ facie* it would seem that, if there ever was a case within the terms of section 12, this was the case. The debt claimed in the action did not exceed £50: the defendant carried on business within the City at the time of the action brought; and the cause of action, moreover, if not wholly, at all events in part, arose therein. So, then, every condition necessary to preclude the defendant from objecting to the jurisdiction was present; in other words, all the circumstances showed that the jurisdiction of the Mayor's Court was unimpeachable; and the Common Pleas Division made the rule absolute for a prohibition with costs.

clearly within section 12.

Judgment of C. P. Division.

Under Judicature Acts

Thanks to the Judicature Acts, which gave the plaintiff a *right* to a re-hearing before the Court of

(*l*) L. R. 1 C. P. D. 418; 46 L. J. C. P. 18; 34 L. T. (N. S.) 836; 24 W. R. 895.

Appeal, this question could now be argued before a tribunal unembarrassed by previous decisions and free to decide the issues involved as if they were then raised for the first time. The Master of the Rolls, upon the principle that a judge is bound to impute a reasonable intention to the Legislature in passing an Act of Parliament, and reading the two sections together, unhesitatingly came to the conclusion that, in taking away from a defendant sued under the conditions set forth in the 12th section the right to inform the Inferior Court that it was proceeding without any—or beyond its proper—jurisdiction, Parliament *must have intended* to take away at the same time *his* right to go to a Superior Court and ask for a prohibition. But if the defendant—the person immediately affected and aggrieved by the excess of jurisdiction—was not to be allowed to ask for a prohibition in his own name, could it be seriously contended for one moment that Parliament intentionally left him at liberty to compass the very same object by assuming the disguise of a stranger? That would, indeed, be a *reductio ad absurdum* of the enactment. Lord Justice Mellish pointed out that the decision of the Common Pleas Division was contrary to principle, inasmuch as it assumed that an Inferior Court might be subject to a writ of prohibition on the ground of excess of jurisdiction in a case where by the Act of Parliament it was impossible for the Inferior Court to be made cognizant of the facts upon which alone the prohibition was founded. Cockburn, C. J., and Pollock, B., concurring, the judgment of the Common Pleas Division was reversed, and the rule for a prohibition was discharged.

plaintiff might appeal.

Judgment of Jessel, M. R.

Judgment of Mellish, L. J.

Observations on *Hawes* v. *Paveley*.

It should not be overlooked that, while the case of *Hawes* v. *Paveley* decided that the joint effect of sections 12 and 15 of the Mayor's Court Act is to take away from a defendant sued in the Mayor's Court under certain specified conditions the right of moving for a prohibition either in his own name or in the name of anyone else, it also decided—or rather assumed as settled law—that, in cases where those conditions are not present, there is nothing in section 15 to prevent the defendant from doing what the Crown and every subject of the Crown including the plaintiff may do (*m*), by informing the Superior Court that an Inferior Court is exceeding its jurisdiction.

Effect of decision as to section 15.

The effect of this last-mentioned expression of opinion, coming from the Court of Appeal, was to upset the settled practice—which had been rigidly enforced in the Court of Common Pleas—of requiring the motion for a prohibition to the Mayor's Court to be made in the name of a stranger, the defendant's solicitor being recognised by that Court as sufficiently a "stranger" to satisfy the letter of section 15 (*n*). But it must not be supposed that the practice of the Common Pleas in this regard had been looked upon with general approval until *Hawes* v. *Paveley* was decided. More than a year before that case came into the Court of Appeal, the Master of the Rolls was applied to by the plaintiff in a libel action against Mr. Justice Brett to set aside a writ of prohibition to the Mayor's Court, obtained from the

Jacobs v. *Brett.* (April, 1875.)

(*m*) *Per* Willes, J., at p. 259 of the *Mayor, &c., of London* v. *Cox*.

(*n*) See the case of *Baker* v. *Clark*, cited, *post*, p. 18, and *Willis* v. *Harris*, 43 L. J. (C. P.) 208, Brett, J.

Petty Bag Office by the defendant's solicitors *in their own names*, following the practice of the Court of Common Pleas. It was quite clear on the facts that the Mayor's Court had no jurisdiction to try the action, and the only question seriously discussed on the motion was whether the defendant, who had not pleaded to the jurisdiction, was entitled to move for a prohibition in the Superior Court. Sir George Jessel, upon the principle that the jurisdiction of the Superior Courts to confine an Inferior Court within the limits of its jurisdiction cannot be taken away by anything short of express words or necessary implication, and being of opinion that there was nothing in the language of section 15 to lead necessarily to the inference that the Legislature intended to deprive the Superior Courts of their inherent right, held that the writ had been properly issued *to the defendant*. In point of form, it had not been issued to the defendant but to the clerk to the defendant's solicitors; but, as might have been expected, the suggestion that, by applying for it in the names of his solicitors, the defendant might lawfully obtain that to which he would not have been entitled if he had applied for it in his own name, was at once contemptuously put aside by the learned judge. Unable himself to countenance what he qualified as "a mere subterfuge and evasion" of the enactment in the statute, he also declined to attribute to the Court of Common Pleas the notion that an Act of Parliament may be evaded by a mere subterfuge. At the same time he could not overlook the fact that the practice of the Common Pleas, which compelled a defendant in the

Sole question was as to effect of section 15.

Judgment of Jessel, M. R.

The practice in the

C. P. explained.

Mayor's Court who desired a prohibition to move in the name of a *stranger*, was either a circuitous method of "getting round" an Act of Parliament or a purely technical and meaningless formality resorted to as a means of avoiding unnecessary controversy. He accordingly came to the conclusion that the Court of Common Pleas had allowed the said practice to spring up and continue with their approval by way of showing their entire disapproval of the decision (by which at the same time they felt themselves bound) of Crompton, J., in the case of *Manning* v. *Farquharson* (*o*).

The explanation.

Manning v. *Farquharson.* (Nov. 1860.)

Inasmuch as that case is no longer of any authority, having been obliquely glanced at by the House of Lords in the *Mayor, &c., of London* v. *Cox*, openly dissented from by Jessel, M. R., in *Jacobs* v. *Brett*, and finally overruled by the Court of Appeal in *Hawes* v. *Paveley* (although, for a reason to be explained in a subsequent page, no allusion is made to it in the judgments), it may be worth while to exhume that case from the Law Journal Reports for the purpose of a brief examination before it is finally consigned to the limbo of exploded law contained in what Lord Westbury was pleased to characterize as the rubbish of reports.

The facts.

This was an action begun in the Mayor's Court on September 25, 1860, by a firm of West-End army tailors for £536, the price of goods sold and delivered to the defendant. On the same day an attachment issued to Cox & Co., the well-known army agents, who had moneys of the defendant in their hands.

(*o*) 30 L. J. (N. S.) (Q. B.) 22; 2 H & C. 409; 3 L. T. 578; 9 W. R. 107; cited at p. 8 of *Jacobs* v. *Brett*, L. R. 20 Equity 1; 44 L. J. Ch. 377; 32 L. T. 522; 23 W. R. 556.

They appeared to the attachment as garnishees, but the defendant did not enter an appearance to the action. Upon an affidavit, which alleged that no part of the cause of action arose within the limits of the Mayor's Court jurisdiction, the defendant obtained a rule nisi for a prohibition, which came on for argument before Crompton, J., in the Bail Court. That very learned judge, after hearing Lush show cause and J. O. Griffits in support of the rule, gave judgment to the following effect:—

Defendant did not appear, but moved for prohibition.

Section 15 of the Mayor's Court Act compels a defendant—if he object to the jurisdiction—either to plead to or to submit to the jurisdiction. If he elect to plead to the jurisdiction, he must support his plea by proof, and the question of jurisdiction will then be decided by the Mayor's Court. If he elect not to plead to the jurisdiction, but to plead other matters by way of defence, he will be as much bound by the verdict as if the Mayor's Court had originally possessed jurisdiction to try the case. So far as the defendant is concerned, therefore, the effect of the section is to give the Mayor's Court jurisdiction to go on with the case in any event. The question whether a stranger may interfere and apply to the Superior Court for a prohibition, although the defendant himself may not, is left open as not being necessary to the decision. The old rule of law that an Inferior Court cannot exercise jurisdiction over matters not arising within the local limits, must be held to have been altered by this new Act of Parliament.

Judgment of Crompton, J.

The fallacy which runs through and vitiates the whole of the reasoning of this judgment is the assump-

Criticism of the judgment.

tion that a motion in the Superior Court for a writ of prohibition to the Mayor's Court was one of the "proceedings" in or by which no defendant, after the passing of the Mayor's Court Act, was to be "permitted to object to the jurisdiction" of that Court.

Once admit that the words "in or by any proceeding whatsoever" in the 15th section include proceedings outside the Mayor's Court, and the conclusion at which Crompton, J., arrives is the only logical deduction to be drawn from the language of the section. But do those words include proceedings outside the Mayor's Court, and thus, by necessary implication, take away from the Superior Courts, when the applicant is the defendant, their inherent right to control an inferior tribunal? A simple method of testing this would be to follow it out to its legitimate result. If that were the right construction of the section, every defendant in the Mayor's Court—that is to say, every person against whom another person has brought an action with or without justification—is to be compelled to appear and take one of two courses. He may either submit, at once and without objection, to the jurisdiction of the local court, or he may take an objection to that jurisdiction by way of plea. In either case he is at the mercy of the local court. In the former case, he is precluded from raising the objection at a later stage, while, in the latter, he has submitted the final decision of the question whether the local court has or has not jurisdiction to the local court itself, and must, therefore, if that question be decided against him, submit also to judgment in the action, because, by pleading to

the jurisdiction in the Mayor's Court, a defendant admits that there is no defence on the merits. It cannot be doubted that, if Parliament had intended to confer an unlimited jurisdiction on the Mayor's Court, and to render it absolutely independent of the control which is exercised by the Superior Courts over all other Inferior Courts, such an intention would have been indicated by express words. But, if the construction put upon the section by Crompton, J., was right, the new Act of Parliament must be taken to have abrogated by implication an old and well-established rule of law as to Inferior Courts—an assumption which is altogether unwarrantable.

It is clear from the language used by Willes, J., in advising the House of Lords in the *Mayor, &c., of London* v. *Cox* (*p*) that, if that learned judge had felt at liberty to dissent from the decision in *Manning* v. *Farquharson* (which, by the way, had been expressly approved by the Court of Exchequer Chamber in their judgment then under review by the House of Lords) (*q*), he would not have hesitated to do so. But, inasmuch as the case of the *Mayor*, &c., *of London* v. *Cox*, turned on the right of the garnishee to a prohibition under section 15 of the Mayor's Court Act, it was unnecessary for the House either to approve or overrule the decision in *Manning* v. *Farquharson*, which did not touch the garnishee. And hence it was that that case escaped on that occasion the fate which sooner or later was certain to overtake it.

Why *Manning* v. *Farquharson* was not overruled by the *Mayor, &c., of London* v. *Cox*.

(*p*) At p. 259 of the L. R.
(*q*) See judgment delivered by Crompton, J.; 30 L. J. Q. B. at p. 2; 2 H. & C. 409.

Manning v. *Farquharson* binding on C. P.

In the meantime, however, it was supposed to be binding on the Court of Common Pleas, the tribunal to which all persons sued in the Mayor's Court upon a claim to which they had no defence were wont to resort, and, accordingly, we find in January, 1873, an application made by a defendant for a prohibition refused by that Court on the sole ground that, as the defendant in the Mayor's Court, *he* was not entitled to what he was applying for. The head note to the case of *Baker* v. *Clark* (*r*) is significantly ambiguous. It does not say that the defendant cannot have the proceedings in a foreign attachment stayed by a writ of prohibition, but that the defendant cannot *move for* a writ of prohibition. In the report, however, Bovill, C.J., is made to say (addressing the applicant's counsel): "You cannot get over *the express enactment* in the Mayor's Court Act; the defendant cannot have a prohibition." Then we find Keating, J., adding for the comfort of the learned counsel, who may have been somewhat taken aback by the Chief Justice's abrupt way of putting the case: "There can be no difficulty in framing the motion so as to get over the objection." The rule was, of course, refused on that occasion, but, as the reporter goes on to tell us in a foot note, the application was renewed, and the rule, being moved for on behalf of a "stranger"—that is, the defendant's attorney—was granted as a matter of course upon the usual affidavit. That decision, to judge by the few lines contained in the Law Reports, appears on the face of it to be, in so many words, a decision that a defendant in the Mayor's

Baker v. *Clark.* (Jan. 1873.)

Head note to that case ambiguous.

Not so the judgment.

What *Baker* v. *Clark* was supposed to have decided.

(*r*) L. R. 8 C. P. 121; 21 W. R. Dig. 140.

Court, being precluded by the letter of the statute from moving for a prohibition in his own name, must "get over" the technical difficulty which the Legislature has thrown in his way by applying for it in the name of someone else who does not labour under the like disability—say his own solicitor, or that solicitor's clerk (*s*).

Effect of *Baker* v. *Clark* on the practice in the Common Pleas.

It needs hardly be said that, after *Baker* v. *Clark*, no more direct applications for writs of prohibition were made to the Court of Common Pleas by defendants in the Mayor's Court. The practice was supposed to be settled, and, in that Court, was of course adhered to. But in May, 1876, a few days after the Court of Appeal had reversed the decision of the Common Pleas in *Hawes* v. *Paveley*, the question was again raised before Lord Coleridge, C.J., and Brett and Archibald, JJ., in the case of *Bridge* v. *Branch* (*t*). We shall have occasion, in the course of this retrospect of the decisions affecting the jurisdiction and practice of the Mayor's Court, to refer again to that case upon another point. But, for the present purpose, it is enough to say that the objection having been taken—and very properly taken—by the plaintiff's counsel, that the rule for a prohibition had been wrongly granted on the motion of the defendant, who, if *Baker* v. *Clark* was correctly reported, was not entitled to ask for a prohibition, that objection was promptly overruled by the Court, Lord Coleridge remarking that he and all the judges, with whom he had had an opportunity of speaking on the

Effect of *Hawes* v. *Paveley* on the practice in the Common Pleas.

Bridge v. *Branch*. (May, 1876.)

(*s*) See the argument on showing cause, and the judgment of Brett, J., in *Willis* v. *Harris*, 43 L. J. (N. S.) C. P. 208.

(*t*) L. R. 1 C. P. D. 633; 34 L. T. 905; 24 W. R. Dig. 146.

Jacobs v. *Brett* followed.

subject, entirely agreed with that very learned judge the Master of the Rolls in *Jacobs* v. *Brett* (*u*), where he had clearly demonstrated that section 15 of the Mayor's Court Act related only to the procedure in the Mayor's Court. Then we find Archibald, J., adding—as if the point had never been doubted, and as if *Manning* v. *Farquharson* had never been decided—that "it was perfectly open to the defendant as to any one else to call the attention of a Superior Court to any excess of jurisdiction claimed by the Inferior Court."

Baker v. *Clark* required to be explained, if not overruled.

At the same time, however, that the uniform practice of the Court of Common Pleas for a series of years was thus summarily discarded on the strength of a decision by a judge of a co-ordinate Court, there still stood in the books that case of *Baker* v. *Clark*, cited by the plaintiff's counsel. It was necessary therefore that *Baker* v. *Clark* should be either overruled or distinguished, and accordingly we find that, in the hands of Lord Coleridge and Brett, J., it underwent the process of being what the law reporter, in the head note to *Bridge* v. *Branch*, calls "explained."

Lord Coleridge's explanation.

According to Lord Coleridge the explanation was that, in consequence of a suggestion that section 15 precluded the defendant from objecting to the jurisdiction *otherwise* (*x*) than by plea, a difficulty was supposed to arise, to obviate which the applicant (in *Baker* v. *Clark*) was recommended to renew the motion in the name of a stranger.

Brett, J.'s explanation.

Brett, J., by way of further

(*u*) L. R. 20 Eq. 1; 44 L. J. Ch. 377; 32 L. T. 522; 23 W. R. 556.

(*x*) The words of the section are not "*otherwise* than by plea," but "in or by any *proceeding*, &c., except, &c."

explanation, added that it never was intended to decide as matter of law that the defendant himself could not move in prohibition, all that was intended being that, as some argument might be raised as to section 15, it was better not to raise the question, *when all doubt might be obviated* by moving in the name of a stranger, as suggested in the *Mayor, &c., of London* v. *Cox*.

Explanation not altogether satisfactory.

This "explanation" would have been more satisfactory if it were the fact that "all doubt might have been obviated" by moving in the name of a stranger. But, unfortunately for that theory, it so happened that, when the Court where the defendant moved for a prohibition in the name of a stranger was not the Common Pleas, so far was all doubt from being obviated that it was only more doubtful than before. This was illustrated by a case decided by the Master of the Rolls in the previous year. *Chambers* v. *Green* (*y*) was an action in the Mayor's Court for the price of goods sold and delivered, in which judgment had been signed for default of appearance and execution issued. Both judgment and execution having, on the application of the defendant, been set aside on terms, a writ of prohibition was two days later issued out of the Petty Bag Office to restrain the Mayor's Court on the ground of want of jurisdiction. The plaintiff then moved before Jessel, M.R., to set aside the writ, which that learned judge, in the exercise of the discretion which he believed himself to possess, accordingly did with costs. It should be mentioned (to make what follows intelligible) that the writ had been taken out, regardless of

Chambers v. *Green.* (July, 1875.) Facts.

Prohibition set aside by Jessel, M. R.

(*y*) L. R. 20 Eq. 552; 44 L. J. Ch. 600; 24 W. R. Dig. 146.

the warning given in *Jacobs* v. *Brett* (*z*), in the name of the defendant's solicitor, who played his accustomed rôle of "stranger." Jessel, M.R., recognising the well-known rule that the Superior Court will not grant a writ of prohibition to an Inferior Court unless it is satisfied upon the law and the facts that the Inferior Court is exceeding its jurisdiction, held also, upon the authority of Cockburn, C.J., and Wightman and Crompton, JJ., *in re Forster* (*a*), that, even where there is no doubt as to the excess of jurisdiction, the Superior Court is not bound *ex debito justitiæ* to prohibit, if the informant is a stranger and not a party aggrieved, but may exercise a discretion to grant or refuse the writ.

Judgment of Jessel, M.R.

In re Forster followed, *Worthington* v. *Jeffries* dissented from.

This decision was—or appeared to be—directly in the teeth of a considered judgment of the Court of Common Pleas delivered by Brett, J., in the previous April. In *Worthington* v. *Jeffries* (*b*), the Common Pleas had decided that, where the Superior Court is satisfied in law and in fact of the want of jurisdiction, it is judicially bound *ex debito justitiæ* to prohibit the encroachment on the Royal Prerogative, no matter how or by whom it is informed thereof. The Common Pleas judges held that there was no room for the exercise of a judicial discretion except where there was a doubt as to the law or the facts, while the Master of the Rolls, on the other hand, seems to have held that the question whether there was room for the exercise of a judicial discretion depended upon the answer to the question whether

Worthington v. *Jeffries* (April, 1875).

What that case decided.

(*z*) L. R. 20 Eq. 1; 44 L. J. Ch. 377; 32 L. T. 522; 23 W. R. 556.

(*a*) 4 B. & S. 187; 32 L. J. (N. S.) Q. B. 312.

(*b*) L. R. 10 C. P. 379; 44 L. J. C. P. 209; 32 L. T. 606; 23 W. R. 750.

the informant was an interested party or a disinterested person who was not a party.

Basis of M.R.'s decision.

The judgment of the M.R., if correctly reported, appears to have been based on the hypothesis that both plaintiff and defendant in the Inferior Court—the only parties interested—were agreed in wishing the Inferior Court to decide the cause, while a stranger to the litigation had volunteered the information that the Inferior Court was going beyond its jurisdiction. The learned judge, no doubt, intentionally ignored the fact that the said hypothesis, albeit consistent with the apparent circumstances, was not consistent with the actual circumstances of the case. No one knew better than Sir George Jessel that the hypothetical "stranger" was in fact the solicitor acting or purporting to act on behalf of the defendant, or, in other words, the defendant himself in disguise.

Result of this difference of opinion.

Here then was exhibited a somewhat anomalous state of things. An application was made to the Master of the Rolls to prohibit the Mayor's Court in a case where there was no doubt of the excess of jurisdiction, and that application was refused on the sole ground that it was made by a stranger and not by the defendant. Had the same application been made to the Court of Common Pleas by the defendant in his own name (as, according to Jessel, M.R., it ought to have been), it would have been refused on the sole ground that it ought to have been made in the name of a stranger.

Ellis v. *Fleming.* (Jan., 1876.)

In a later case before the Common Pleas Division (*Ellis* v. *Fleming*) (*c*), the dictum of the M.R. in *Cham-*

(*c*) L. R. 1 C. P. D. 237; 45 L. J. C. P. 512; 24 W. R. Dig. 144.

Chambers v. *Green*, explained by Brett, J.

bers v. *Green* was referred to by Brett, J., who gave it as his opinion that the dictum in question did not at all derogate from the authority of the Common Pleas' decision in *Worthington* v. *Jeffries* (*d*), and amounted to no more than this—that, upon the question of discretion, the Master of the Rolls did not adopt the view taken by the Court of Common Pleas.

But admits of another explanation.

It is no doubt unfortunate when reported judgments require judicial explanation, but, with all due deference to Lord Justice Brett, we cannot help suspecting that the true explanation of the somewhat puzzling decision in *Chambers* v. *Green* (*e*) is to be found in the determination of the Master of the Rolls to discountenance anything like an evasion of the Act of Parliament. That explains, probably, why he could not or would not see the defendant behind the stranger.

Taylor v. *Nicholls*. (Feb., 1876.)

It is interesting to observe that in a subsequent case (*Taylor* v. *Nicholls*) (*f*), to which reference will be made hereafter for another purpose, the motion for a rule *nisi* was made on the joint affidavit of the defendant and a stranger; a happy combination of an interested party with a disinterested person, to which no exception could be taken either in Westminster Hall or at the Rolls. The judgment, however, of the Court of Appeal in *Hawes* v. *Paveley* (*g*) has finally removed all occasion for any such exercise of ingenuity in future cases, and, should it ever be necessary again to go to the High Court of Justice to restrain the Mayor's Court from exceeding its jurisdiction, the solicitor for

All doubt removed by *Hawes* v. *Paveley*. (May, 1876.)

(*d*) L. R. 10 C. P. 379.
(*e*) L. R. 20 Eq. 552.
(*f*) L. R. 1 C. P. D. 242; 45 L. J. C. P. 455; 24 W. R. 673.
(*g*) L. R. 1 C. P. D. 418; *ante*, pp. 10—12.

the defendant need have no fear lest, if he instruct counsel to move *on behalf of the defendant*, there should be a repetition of what is reported to have happened in the Court of Common Pleas in the case of *Baker* v. *Clark*.

Oram v. *Brearey*. (May, 1877.)

It may be mentioned, before leaving this branch of the subject, that in May, 1877, an application was made to the Exchequer Division by the defendant in the case of *Oram* v. *Brearey* (*h*), for a prohibition to the Salford Hundred Court of Record, on the ground of want of jurisdiction. That Court has jurisdiction in personal actions where the debt or damage claimed does not exceed £50, if the cause of action arises within the Hundred. It was not disputed that in this case the cause of action arose outside the local jurisdiction, but it was contended that, by the 7th section of the local Act, it was obligatory on the defendant to take the objection to jurisdiction by a special plea, and that, as he had not done so, he could not move for a prohibition. The language of the section, which is slightly different from that of the 15th section of the M. C. L. P. Act, 1857, runs as follows:—"No defendant shall be permitted to object to the jurisdiction of the Court *otherwise than* by *special* plea; and if the want of jurisdiction be not so pleaded, *the Court shall have jurisdiction for all purposes*."

32 & 33 Vict. c. 130, s. 7.

Language of that section.

Objection not to be made "otherwise than," &c.

It was on the reasoning of the judgments in *Jacobs* v. *Brett* and *Hawes* v. *Paveley* that Pollock and Huddleston, BB., held that full effect was given to the words of the local Act by construing them to mean that, after the passing of the Act, the only mode open to defendant

Judgment of Ex. Div.

(*h*) L. R. 2 Ex. D. 346; 46 L. J. (Ex.) 481; 36 L. T. (N. S.) 475; 25 W. R. 695.

of objecting *in that Court* to the jurisdiction was by a special plea. There were no express words depriving the Superior Courts of their inherent right to prohibit the local Court from transgressing the local limits, nor was the intention to take away that right a necessary inference from the language used. It must be held, therefore, that the right had not been taken away, and that the defendant was entitled to the writ, although he had not pleaded specially, and although, by consequence, the Salford Court was to "have jurisdiction for all purposes."

Meaning and effect of the 12th section of M. C. L. P. Act.

The 15th section, so far as regards its proper meaning and effect independently of the 12th, being now disposed of, we may revert to the question with which *Hawes* v. *Paveley* was mainly concerned – the meaning and effect of the 12th section when read by the light of the 15th. The first point to be noted is that the 12th section does not apply to any case where the amount sought to be recovered exceeds £50. Secondly, it does apply to every claim not exceeding that amount, whether it be debt or damages, provided one or the other of two alternative conditions is satisfied. The Mayor's Court has an absolute jurisdiction to try every claim not exceeding £50, provided one of the defendants (if there are more defendants than one) dwells or carries on business within the City of London or the liberties thereof at the time the action is commenced, or has done so at any time within six months of that date.

Does not apply to claims over £50.

Does apply to all claims up to £50, under certain conditions.

Condition of residence or place of business.

Apparently a mere

Primâ facie one would scarcely expect to find any question of law involved in the attempt to answer, of

any given person, the simple questions: Does he dwell or carry on business within the City of London or its liberties? Has he done so at any time within six months of a given day? These would seem to be mere questions of fact, requiring, before they can be satisfactorily answered, a knowledge of the topography of the City of London, and of the biography for six months past of the person or persons whom it is proposed to sue in the local Court. If the defendant dwells, or has at any time within the past six months dwelt, within those limits, it is unnecessary to inquire where he carries on or has carried on business. Conversely, if he carries on, or has at any time within the past six months carried on, business within those limits, it is immaterial where he dwells or has dwelt. Simple, however, as these questions at first sight appear to be, the answers to them cannot safely be relied on without a knowledge of the rules which have been laid down by the Courts in reference to such considerations.

question of fact.

Not so, really.

It may be assumed that, in considering whether any given case falls within the terms of section 12, no serious difficulty is likely to arise as to the dwelling-place or place of business of an individual or (to borrow a phrase from Huddleston, B.) "a natural man." A natural person "dwells" where he habitually sleeps and lives; or, in other words, where his *home* is. Similarly, he "carries on business" where his business is carried on or managed. Most persons have a "home" of some sort—some place where they may be said to live. But, in the present day, the number of those whose "home" is to be found within the boundaries of the "City of

1st question: Where does the defendant dwell or carry on business?

The answer to that question, where defendant is an individual.

London or the liberties thereof" is very limited, and is likely to become more so. Practically, therefore, it is of more importance for the present purpose to know how the Courts of Law have construed the expression "carrying on business." The result of the authorities upon that point seems to be that no person can be held to "carry on business" who has not an independent business of his own. Attempts were made from time to time, in cases arising under the Small Debts Acts (*i*), to extend the meaning of the word "business," and to show by the authority of Johnson's Dictionary that it was synonymous with "employment." All such attempts, however, were futile, the Courts invariably refusing to hold that a person who was not *in business for himself* at all could properly be said to "carry on business" at any particular place. So far, the questions seem tolerably easy to answer. But when the person to be sued is "the artificial and legal person called a corporation," the answer is by no means so simple a matter. Suppose one has a claim against a joint-stock company with an office in the City, and, for reasons of his own, is desirous of trying his claim in the Mayor's Court, how is he to make sure that he is right in assuming, because the defendants have a place of business in the City, that it is there they *carry on* their business?

Where defendant is a corporation.

Cesena Sulphur Co. v. *Nicholson*; *Calcutta*

This question was discussed by the Exchequer Division in two Revenue cases argued together before Kelly, C.B., and Huddleston, B., in February, 1876 (*k*). The

(*i*) See *Rolfe* v. *Learmonth*, 19 L. J. (N. S.) Q. B. 10; *Buckley* v. *Hann*, *ibid.*, Ex. 151; 5 Ex. Rep. 43; *Sangster* v. *Cave*, 19 L. J. (N. S.) Ex. 314.

(*k*) L. R. 1 Ex. D. 445; 45 L. J. Ex. 821; 35 L. T. 275; 25 W. R. 71.

definition there given by the Chief Baron of the "residence" of a joint-stock company may serve as a guide to persons who wish to sue a company in the Mayor's Court. "A joint-stock company resides where its place of incorporation is—where the meetings of the whole company or of those who represent it are held, and where its governing body meets in bodily presence for the purposes of the company." It would be difficult to formulate more neatly the test by which to determine where a joint-stock company dwells or carries on business. Anyone who is interested in pursuing the investigation of this subject will find the authorities summarized or referred to in the judgment of Huddleston, B.

Jute Mills Co. v. the same. (Feb., 1876.)

The residence of a joint-stock company defined by Kelly, C.B.

Then, again, as to railway companies, of which there are several having a terminus within the boundaries of the City, the question will often arise—where does the company carry on business? Happily for future litigants in the Mayor's Court and their legal advisers, the answer to that question has been given decisively in two recent cases in which the South Eastern Railway Company and the London, Chatham and Dover Railway Company were respectively defendants. In neither case did the damage claimed exceed £50; in both cases it was admitted that no part of the cause of action arose within the jurisdiction of the Mayor's Court. In each case the fact relied on by the plaintiff as giving the Mayor's Court an absolute jurisdiction under the 12th section was the fact that the company "carried on business within the City or the liberties thereof." It was undisputed that, in one sense, each company did carry on business within the City, the South Eastern

Railway companies.

The question, where does a railway company carry on business? admits of a decided answer.

Le Tailleur v. *S. E. Ry. Co.* (Nov., 1877.)

Rogers v. *L. C. & D. Ry. Co.* (Dec., 1877.)

having a terminal station in Cannon Street, and the Chatham Company a terminal station at Holborn Viaduct. Each company, moreover, in addition to its normal business as carriers for reward, carried on the business of hotel-keepers within the local boundaries. In the case of the Chatham Company, too, it was alleged and not denied that the principal depôt for the goods traffic was at Blackfriars, which, though not within the City, was said to be within the liberties of the City, and, therefore, was equally within the jurisdiction of the Mayor's Court. It was in vain that plaintiff's counsel argued that, the main object of the local Act being to extend the jurisdiction of the local Court, the words "carrying on business" should be construed liberally and with a leaning rather towards than against an extension of the inferior jurisdiction. The learned Judges of the Common Pleas Division, however (Grove and Lindley, JJ.), were not convinced by the ingenious argument, and ordered the Writ of Prohibition to go without calling on the defendant's counsel. The fact was that the case of *Brown* v. *The London & North Western Railway Company* (*l*) was an authority directly in point, and, unfortunately for the plaintiffs in the cases of *Le Tailleur* v. *South Eastern Railway Company* (*m*) and *Rogers* v. *London, Chatham and Dover Railway Company* (*n*), directly against them. The only hope of distinguishing those cases from *Brown's* case lay in the circumstance that the one was decided upon the language of section 60 of the Small Debts Act (9 & 10 Vict. c. 95)—an Act passed to *confer* a limited juris-

Plaintiff's contention.

Judgment of C. P. D.

Brown v. *L. & N. W. Ry. Co.* (June, 1863.)

Attempt to distinguish Brown's Case.

(*l*) 32 L. J. (N. S.) Q. B. 318; 11 W. R. 884.

(*m*) L. R. 3 C. P. D. 18.

(*n*) 39 L. T.; 26 W. R. 192.

diction—while the others turned upon the language of section 12 of the Mayor's Court Procedure Act, an Act passed to *extend* a limited jurisdiction. It needs hardly to be added that *Brown's* case was held to be undistinguishable, and, being so, was followed. The consideration, therefore, of this branch of the subject now under discussion may be suitably closed with an extract from the judgment of Blackburn, J., in what is still the leading case on this point: "Business can only be said to be 'carried on' where it is *managed* . . . . the place of business in general must be the place where the *general superintendence* and *management* take place. The London & North Western Railway Company are carrying on a very extensive business at different great stations—Chester among the rest; BUT IT IS ONE ENTIRE BUSINESS, and the whole is controlled by the directors in London, where there is the *general superintendence*. I agree with Hill, J. (in *Shiels* v. *The Great Northern Railway Company*) (*o*), that a *railway company carries on its business at the principal station only*."

Attempt failed.

Blackburn, J., in *Brown* v. *L. & N. W. Ry. Co.*, at p. 321.

Shiels v *G. N. Ry. Co.*, cited with approval.

That last sentence sums up the law as it now stands, and, therefore, the point which any one who is contemplating an action in the Mayor's Court against a railway company must, if he would avoid the pains and penalties of a writ of prohibition, take care to ascertain is whether the principal station—and there can only be one *principal* station to every railway company—is within the City of London or the liberties thereof. If it be so, then he may safely sue the Company in the Mayor's Court for any sum not exceeding £50, even although the whole cause of action arose out of the

Application of rule above laid down.

(*o*) 30 L. J. (N. S.) Q. B. 331; 7 Jur. (N. S.) 631; 9 W. R. 739.

jurisdiction. If it be not, then he cannot sue the Company in that Court unless he can show that some part of the cause of action arose within the jurisdiction.

Second alternative condition in section 12.

This brings us to the consideration of the second alternative condition which, if present, will give the Mayor's Court an absolute jurisdiction in cases within the 12th section. If the cause of action, either wholly or in part, arose therein—*i. e.*, within the local limits—no plea to the jurisdiction shall be allowed; in other words, the competence of the Mayor's Court to try the action shall not be in any way challenged by the defendant or by any one else.

Part of the cause of action must have arisen within the local limits.

As it is obviously idle to inquire whether "the cause of action" in any given case "arose" at any given place, unless it is known, (1) what is to be understood by a "cause of action," and (2) what is meant by a cause of action "arising" at a particular place, it will be necessary to review the authorities upon these points.

What is meant by a cause of action?

We may begin by saying that the simple words "cause of action," which to the lay intelligence convey either no meaning whatever or some hazy notion associated with the service of a writ, are capable, in the hands of experts, of being twisted and stretched until they appear to bear any meaning that one likes to put upon them. Here are a few stray specimens, by way of illustration. "Independently of authority I should hold that cause of action means whole cause of action" (*per* Kelly, C.B.) (*p*). "The word 'whole' as applied to a cause of action has no meaning, for the whole cause of

Examples of definition.

Kelly, C.B.

Cleasby, B.

(*p*) *Durham* v. *Spence*, L. R. 6 Ex. 3, s. c. Ex. 46, at p. 50; 40 L. J. (N. S.)

action cannot be said to *arise* anywhere" (*per* Cleasby, B.) (*q*). "I understand by cause of action that which creates the necessity for bringing the action or the case of complaint," (*per* Pigott, B.) (*r*). The cause of action arose in England, because that is the place where the parties were when the breach [of promise to marry] took place," (*per* Martin, B.) (*s*). "Cause of action has been held, from the earliest time, to mean every fact which is material to be proved to entitle the plaintiff to succeed, and which the defendant would have a right to traverse," (*per* Brett, J.) (*t*). "The cause of action means the entire cause of action" (*per* Martin, B.). "All the facts which together constitute the plaintiff's right to maintain the action" (*per* Blackburn, J.), (*u*). It should be remembered that these various and contradictory attempts to define a cause of action were called forth by the necessity for putting a rational construction on the ambiguous language of a familiar section (the 18th) of the Common Law Procedure Act, 1852. Unfortunately, the view taken by the Court of Queen's Bench of the meaning of the words "a cause of action which arose within the jurisdiction" was entirely opposed to the view taken by the Court of Common Pleas. In 1868—not to mention earlier cases—the Queen's Bench in *Allhusen* v. *Malgarejo* (*u*), held that those words meant not merely the act on the part of the defendant which gives rise to the action, but all the facts which

Pigott, B.

Martin, B.

Brett, J.

Martin, B.

Blackburn, J.

Origin of these attempts to define a cause of action.

C. L. P., Act, 1852, s. 18.

Conflict of opinion between Queen's Bench and Common Pleas.

Allhusen v. *Malgarejo.* (April, 1868.)

Definition of "a cause

(*q*) *Ibid.*, at p. 52.
(*r*) *Ibid.*, at p. 48.
(*s*) *Ibid.*, at p. 49.
(*t*) *Cooke* v. *Gill*, L. R. 8 C. P. 107, at p. 116; 42 L. J. C. P. 98; 28 L. T. 32; 21 W. R. 334, s. c.
(*u*) *Allhusen* v. *Malgarejo*, L. R. 3 Q. B. 340; 37 L. J. (N. S.) Q. B. 169; 18 L. T. 323; 16 W. R. 854.

of action which arose," &c.

Action in Q. B. stayed.

Begun afresh in C. P.

Plaintiff obtained leave to proceed from Willes, J.

Result.

Jackson v. *Spittal.* (July, 1870.)

Some words defined by Common Pleas.

Considered judgment delivered by Brett, J.

Facts of that case.

together constitute the plaintiff's right to maintain the action. Acting upon this view of the meaning of the section, the Court set aside the writ, the service, and all subsequent proceedings, on the ground that the cause of action did not arise within the jurisdiction. It is a noteworthy commentary on the working of the judicature system which was abolished when the Superior Courts of Law and Equity were consolidated under the title of the High Court of Justice that, after the action in the Queen's Bench had been discontinued, the plaintiff issued a fresh writ in the Court of Common Pleas, and Willes, J., sitting at Chambers, having given him leave to proceed in accordance with the usual practice in that Court, he did proceed with his action, and recovered large damages from the defendant (*x*).

In July, 1870, the Court of Common Pleas (Bovill, C.J., Keating, M. Smith, and Brett, J.J), expressly dissented from the construction put upon the section by the Court of Queen's Bench, and defined the words "cause of action," &c., to mean "the act on the part of the defendant which gives the plaintiff his cause of complaint." (*y*). The judgment in that case (*Jackson v. Spittal*) (*y*), was delivered by Brett, J., and contains an exhaustive and elaborate review of the state of the law at the time the statute (C. L. P. Act, 1852) was passed in regard to the jurisdiction of the English Courts over British subjects resident abroad and over foreigners. There the plaintiff had sued the defendant, a British subject residing in the Isle of Man, on an alleged breach

(*x*) See *Law Times*, vol. 47, p. 142; June 19, 1869.

(*y*) L. R. 5 C. P. 542; 39 L. J. (N. S.) C. P. 321; 18 W. R. 1162.

of a contract not to indorse a bill of exchange delivered to him as a security. The contract was made in the Isle of Man, which was not—but the breach occurred in Manchester, which was—within the jurisdiction of the English Courts. The defendant, having been served with a writ in the Isle of Man, obtained an order to stay proceedings on the ground that the whole cause of action did not arise within the jurisdiction. The matter being referred from chambers to the Court, the order to stay was set aside; whereas, if the plaintiff had been suing in the Court of Queen's Bench, it was the writ that would have been set aside.

Court of Exchequer.

Durham v. *Spence.* (Nov. 1870.)

Facts of that case.

In the course of the same year the Court of Exchequer had the same question before it in a breach of promise case (*Durham* v. *Spence*) (*z*), where the defendant, while resident at the Cape of Good Hope, promised to marry the plaintiff, then resident at Calcutta, and afterwards, when in England, renounced the contract in a letter to the plaintiff, who also was in England at the time. This was the breach complained of; in other words, it was "the act on the part of the defendant which gave rise to the action." Having returned to the Cape, the defendant was there served with the writ, which he now moved to set aside on the ground that the cause of action did not arise within the jurisdiction. Martin, B., was of opinion that the cause of action did arise within the jurisdiction, because both plaintiff and defendant were in England when the breach took place. At the same time he expressly adhered to the view he had taken in the former Exchequer

Martin, B.

(*z*) L. R. 6 Ex. 46; 40 L. J. (N. S.) Ex. 3.

case of *Sichel* v. *Borch* (*a*), and approved the Queen's
Pigott, B. Bench decision in *Allhusen* v. *Malgarejo* (*b*). Pigott, B., adopted the view of the Common Pleas in *Jackson* v. *Spittal* (*c*), as being "in accordance with the true meaning of the words used by the Legislature in framing the
Cleasby, B. section." Cleasby, B., looking at the words "cause of action" as if they were used for the first time in that section, and ignoring the fact that they had acquired a secondary meaning as words of art, held that the true test of the place where a cause of action arose is to determine the time when it arose. When it arises, according to the learned Baron, is when that is not done which ought to have been done, or when that is done which ought not to have been done. Fix on the moment of time when that default or that act took place, and you will have fixed on the place where the
Kelly, C. B. cause of action arose. Kelly, C.B., on the other hand, was of opinion that the Queen's Bench were right and the Common Pleas wrong, and that the "balance of justice and expediency inclined strongly against" the construction put upon the section by the Common
Result. Pleas. There being, however, a majority in favour of the plaintiff in this particular case, the writ was not set aside, and the action proceeded.

Queen's Bench. *Cherry* v. *Thompson.* (May, 1872.)

In 1872, in the case of *Cherry* v. *Thompson* (*d*), the same question was again raised in the Queen's Bench before the Lord Chief Justice, and Blackburn, Lush, and Quain, JJ., who reconsidered the decision in

The Common Pleas

(*a*) 33 L. J. (N. S.) Ex. 179; 2 H. & C. 954.

(*b*) L. R. 3 Q. B. 340; 37 L. J. (N. S.) Q. B. 169; 18 L. T. 323; 16 W. R. 854.

(*c*) L. R. 5 C. P. 542; 39 L. J. (N. S.) C. P. 321; 18 W. R. 1162.

(*d*) L. R. 7 Q. B. 573; 41 L. J. (N. S.) Q. B. 243; 26 L. T. 791; 20 W. R. 1029.

Allhusen v. *Malgarejo* in the light of the subsequent Common Pleas and Exchequer decisions, and, after careful consideration, ended by deliberately re-affirming their former view and entirely rejecting both the conclusion arrived at by the Common Pleas in *Jackson* v. *Spittal* (*e*) and the reasoning by which it was supported. It is remarkable that, in the report of the next case in which this question came before the Court of Common Pleas, no allusion is made in the argument to the case of *Cherry* v. *Thompson* (*f*) in the Queen's Bench, where *Jackson* v. *Spittal* was expressly dissented from, while *Allhusen* v. *Malgarejo*, which was some years earlier than *Jackson* v. *Spittal*, is cited. This conflict of opinion between Courts of co-ordinate jurisdiction—none of which was bound by the decision of another given in a case which could not be reviewed in a Court of Error—had grown to the proportions of a grave scandal, and accordingly it was felt by Lord Coleridge and other learned judges of the Common Pleas, when the application to set aside the writ, &c., in the case of *Vaughan* v. *Weldon* (*g*) was referred from chambers to the Court, that a conference of all the judges at Westminster Hall should be held for the purpose of securing for the future, if not unanimity, at all events uniformity in practice.

case dissented from.

How the controversy was ended.

Vaughan v. *Weldon.* (Nov. 1874.)

The conference was held, but, as its sittings were necessarily private, nothing more was made known of what took place than that the majority of voices was in favour of the construction adopted by the Common

Conference of Common Law Judges.

(*e*) L. R. 5 C. P. 542; 39 L. J. (N. S.) C. P. 321; 18 W. R. 1162.

(*f*) L. R. 7 Q. B. 573; 41 L. J. (N. S.) Q. B. 243; 26 L. T. 791; 20 W. R. 1029.

(*g*) L. R. 10 C. P. 47; 44 L. J. C. P. 64; 31 L. T. 683; 23 W. R. 138.

Pleas in *Jackson* v. *Spittal*, and that the minority of judges (including, it is presumed, all the judges of the Queen's Bench), while adhering to their own opinion as to the true intent and meaning of the section, were willing for the sake of uniformity to follow in future the practice of the Common Pleas; and so that famous controversy ended in a compromise.

Result.

It must not, however, be assumed that, because the controversy between the Queen's Bench and Common Pleas as to the meaning of certain words in the 18th section of the C. L. P. Act, 1852, was disposed of, that settlement necessarily carried with it the question of the meaning to be put upon the same or similar words in a section of another statute and in a different context. What *Vaughan* v. *Weldon* (*h*) settled was that, in using the words "a cause of action which arose within the jurisdiction, or in respect of the breach of a contract made within the jurisdiction," it should in future be taken that Parliament intended that the plaintiff (in the Superior Court) should have liberty to proceed wherever the judge is satisfied by affidavit that the act on the part of the defendant which gives the plaintiff his immediate cause of complaint was committed within the jurisdiction of the English Courts. Right or wrong, that is to be for the future the construction of that particular enactment, which, so construed, undoubtedly extends the jurisdiction of the Supreme Court of Judicature in this country as well over foreigners as over British subjects resident abroad.

What was settled by *Vaughan* v. *Weldon*.

But a rule of practice which has been, after years of

The rule for juris-

(*h*) L. R. 10 C. P. 47; 44 L. J. C. P. 64; 31 L. T. 683; 23 W. R. 138.

controversy, adopted with reference to the jurisdiction of the High Court of Justice as affected by the C. L. P. Act, 1852, may nevertheless be rejected by the Superior Courts when sought to be applied to the construction of a statute affecting the jurisdiction of an Inferior Court. diction of Superior Court is different from rule for jurisdiction of Inferior Court.

And the series of decisions upon the construction of the words "cause of action" as used in the Small Debts Act (9 & 10 Vict. c. 95), shows that her Majesty's Judges have never lost sight of the old rule that "nothing shall be intended to be within the jurisdiction of an Inferior Court but that which is so expressly alleged" (*i*). Therefore, in every case where the question was as to the construction of the words in the 60th section of the Small Debts Act—"the district in which *the cause of action* arose," it was held by the Superior Courts that by "*the cause* of action" was there meant the *entire* cause of action, so that if any material part of the cause of action arose outside the district, that was not the district in which "*the* cause of action" arose. The language of section 128 of the same statute was different. The object of that section was to give the Superior Courts, in certain cases, concurrent jurisdiction with the Inferior Courts. All actions, &c., which might (before that Act) have been brought in any of her Majesty's Superior Courts of Record . . . where the cause of action did not arise wholly *or in some material point* within the jurisdiction of the Court within which the defendant dwelt or carried on his business at the time of the action brought, might be brought and deter- Authorities on meaning of "cause of action" in Small Debts Act. Section 60. Section 128.

(*i*) *Peacock* v. *Bell*, 1 Wms. Saund. 101 (r), cited by Willes, J., at p. 259 of the Law Rep. of *Mayor, &c., of London* v. *Cox*. Compare L. R. 7 C. P. 296, and the cases cited in argument in *Borthwick* v. *Walton* (Jan., 1855), 24 L. J. C. P. 83.

mined in any such Superior Court at the election of the party suing, as if the Act had not passed.

There, if the cause of action did not, either wholly or *in some material point* (not a very happy mode of expression), arise within the prescribed limits, the party complaining might resort to the Inferior or to the Superior Courts at his election. Conversely, if, in any material point, the cause of action did arise within those limits, the party complaining had no option, but was compelled to seek his remedy in the Inferior Court. Under that section, therefore, in any case where admittedly the cause of action did not wholly arise within the local jurisdiction, the question would occur whether it could be said to have arisen there in any "point," and, if so, whether that point was *a material point*. The answer to the last question would of course depend on the nature of the particular case (*k*).

The wording of the 128th section of the Small Debts Act is identical with that of the section of the Mayor's Court Procedure Act which we are now discussing, save that for the words "in some material point" the words "in part" are substituted. But in the County Courts Acts Amendment Act of 1867, the language is *verbatim* the same. With the leave of the Court a plaint may be entered in the County Court in whose district the cause of action or suit *wholly or in part* arose. That being so, it would not be unreasonable to expect that the principle upon which the Judges of the Superior Courts have decided cases arising under the first section of the

30 & 31 Vict. c. 142.

(*k*) In *Huth* v. *Long* (19 L. J. Q. B. 325) it was held by Coleridge, J., that proof of notice of dishonour having been given to the drawer of a bill within the jurisdiction was enough to show that the cause of action in a material point arose therein. Compare *Wood* v. *Perry* (Feb., 1849), 18 L. J. Ex. 161, and the cases there cited.

County Courts Acts Amendment Act, 1867, would be also the principle upon which they would decide cases arising under the 12th section of the Mayor's Court Procedure Act. In the case of *Green* v. *Beach* (*l*), which came before the Court of Exchequer in June, 1873, the plaintiff carried on business in the Blackburn County Court district, and the defendant in that of the Liverpool County Court. The plaintiff at Blackburn made a verbal offer to the defendant to buy certain cotton, which offer the defendant accepted at Liverpool, where he signed and posted a sold note which the plaintiff received at Blackburn. The cotton was to be, and was, delivered at Liverpool, but, as the plaintiff alleged, less than invoice weight; and by leave of the Registrar a plaint for damages for short delivery was entered in the Blackburn County Court. As Liverpool, where the contract was completed, is not in the Blackburn County Court district, the point was raised, on the defendant's motion for a prohibition, whether the cause of action had "in part arisen" in the district of the Blackburn County Court. It was held by Kelly, C.B., and Martin and Pollock, BB., that the verbal offer at Blackburn, though not of itself a contract, was nevertheless a part —that is to say, a material part—of the cause of action, and that, consequently, the Blackburn County Court was not exceeding its jurisdiction. Rule for a prohibition refused accordingly.

Green v. *Beach.* (June, 1873.)

Facts of the case.

Judgment.

For "Blackburn County Court" read "the Mayor's Court, London," and suppose that the question of law instead of arising under the County Courts Act, 1867, had arisen under the 12th section of the Mayor's Court

(*l*) L. R. 8 Ex. 199; 42 L. J. (N. S.) Ex. 151; 21 W. R. 856.

Procedure Act. Surely the *ratio decidendi* would have been the same, and the decision could not possibly have been affected by any desire on the part of learned judges to curb the ambition of an aspiring inferior tribunal. There is no doubt that, if the hypothetical case had been argued in the Exchequer, the accident that the Inferior Court was situated in the City of London and not in Lancashire would in no degree have affected the judgment. Whether so much could have been safely predicated of the Court of Common Pleas in the year 1873 is a question which may be better answered after a study of some of the reported judgments of that Court in the two or three years immediately preceding the memorable decision of the Court of Appeal in *Hawes* v. *Paveley*.

Quartly v. *Timmins.* (Jan., 1874.) Facts of that case.

The first of the series was the case of *Quartly* v. *Timmins* (*m*), decided in January, 1874, by Lord Coleridge, C.J., and Keating and Brett, JJ. It was an action under the Bills of Exchange Act, 1867, to recover £30 balance of principal and interest due on a bill drawn upon and accepted by the defendant, payable one month after date. The defendant resisted the claim in the Mayor's Court, and the case went to trial, resulting in a verdict for the plaintiff, whereupon "a stranger" (defendant's attorney, as usual) moved in the Common Pleas for a rule for a prohibition on an affidavit stating that the cause of action "did not arise wholly, *or in a material part*, within the City," &c., and that defendant did not dwell, &c., within, &c. On cause being shown, it seems that *Manning* v. *Farquharson* was cited, for

Claim not exceeding £50.

Verdict for Plaintiff.

Motion by stranger for a Prohibition.

Cause shown.

(*m*) L. R. 9 C. P. 416; 22 W. R. 488.

the purpose apparently of supporting the contention that the right of prohibition was altogether taken away by section 15 of the Mayor's Court, whereupon Keating, J., observed that "that case occurred long before the *Mayor, &c., of London* v. *Cox*," an observation which justifies the inference that, in the opinion of that learned judge, the judgment of Crompton, J., in so far as it was supposed to be an authority against the right to prohibit on the motion of a stranger, had been overruled by the House of Lords.

It is well that attention should be drawn to the headnote to *Quartly* v. *Timmins* in the Law Reports, because, as is stands, it seems to assume that the mere fact of the claim in the Mayor's Court being below (it should have been "not exceeding") £50 took away the defendant's right to plead to the jurisdiction, which is, of course, an entirely erroneous reading of the 12th section. The truth is that, unless the facts are wrongly reported, the case was not within the 12th section at all. Assuming that the words in the report "the defendant not being amenable to the jurisdiction" meant that the defendant did not dwell or carry on business within the City or the liberties thereof, and assuming also that no attempt was made to show that the cause of action had even in part arisen therein, it is obvious that the defendant might have objected to the jurisdiction by way of plea, and, if so, was equally entitled after verdict to set aside the proceedings on the ground of want of jurisdiction.

In the following May another case (*n*) was argued *Robinson* v. *Emanuel.*

(*n*) L.R. 9 C.P. 414; 43 L.J. (N.S.) C.P. 244; 30 L.T. 500; 22 W.R. Dig. 138.

(May, 1874.) before Lord Coleridge, C.J., Brett and Denman, JJ.

Facts of that case. This was an action on a cheque for £10 payable to bearer, drawn by one Lazarus on the London and South Western Bank in the City, and indorsed to the plaintiff by the defendant at Scarboro'. Neither plaintiff nor defendant dwelt or carried on business in the City.

Affidavit on motion for a Prohibition. The defendant's affidavit stated that no part of the cause of action arose within the Mayor's Court jurisdiction, an allegation which, unless displaced, entitled him to a prohibition on the facts.

Cause shown. Cause being shown against the rule, which had been granted as of course on the affidavit mentioned, it was contended that, as the cheque was made payable in the City, the cause of action had *in part* arisen there when payment was refused.

Contention on part of Plaintiff. It was urged that the 12th section of the Mayor's Court Act "was clearly intended to give jurisdiction to the Mayor's Court in such a case as this," where "the act on the part of the defendant which gave the plaintiff his cause of complaint" took place within the local jurisdiction. This contention drew from Brett, J., the remark that, if that had been the intention of the Legislature, it was very easy to say so.

Brett, J. Brett, J., thought it was impossible, after the repeated rebuffs sustained by practitioners in the City, that the plaintiff's attorney could fairly have imagined that the Mayor's Court of London had jurisdiction to try a cause of action *which arose at Scarboro'*. The truth probably is that the plaintiff's attorney did not imagine anything of the kind. He found that, by the 12th section of the Mayor's Court Procedure Act, no plea to the jurisdiction was to be allowed where the cause of action in part

arose within the City, and he "imagined" that, inasmuch as in this case the breach or immediate cause of complaint occurred in the City, the cause of action had, *in part*, arisen within the jurisdiction. It was true there was the case of *Sichel* v. *Borch* (*o*) against him in the Exchequer, but on the other hand there was the case of *Fife* v. *Round* (*p*) (also in the Exchequer) in his favour. And what made the reproof still harder to bear was the fact that, four years before, it had been solemnly laid down by the full Court of Common Pleas that by "cause of action" is to be understood the act on the part of the defendant which gives the plaintiff his cause of complaint. If that was the meaning of a cause of action *arising* at a given place, was the attorney to be publicly censured because he imagined that *a fortiori* it would be held to be the meaning of a cause of action *in part arising* at a given place? The same learned judge goes on to observe that, after the elaborate discussion in the House of Lords in the *Mayor, &c., of London* v. *Cox*—(which, as has been pointed out before (*q*), dealt entirely with the right of a garnishee to move in prohibition, and decided nothing as to the effect of the 12th section on the ordinary jurisdiction of the Mayor's Court)—it behoved that Court to stamp out these improper attempts to create a jurisdiction which was never contemplated by the Legislature.

The next case in the same series was *Gold* v. *Turner* (*r*), which was argued before Lord Coleridge, *Gold* v. *Turner.* (Nov., 1874.)

(*o*) 33 L. J. (N. S.) (Ex.) 179; 3 H. & C. 865.
(*p*) 30 L. T. 291; 6 W. R. 282.
(*q*) See *ante*, p. 17.
(*r*) L. R. 10 C. P. 149; 23 W. R. 732.

C.J., Brett and Grove, JJ., in the following November, on the day after it had been announced by Lord Coleridge that for the future the rule laid down by that Court as to a cause of action arising within the jurisdiction of the Superior Courts would be followed in all the Courts at Westminster Hall. This was a claim not exceeding £50 for the price of goods sold and delivered, and the defendant dwelt, &c., out of the jurisdiction. The goods were ordered at Poplar to be delivered to a carrier named by the buyer, and to be paid for by him. They were received by the carrier, on delivery orders handed to him by the seller in the City, some within and some outside the City. The reasoning of the judgments of the learned judges, who made the Rule for a Prohibition absolute with costs (but not against the plaintiff's attorney, although the Rule was moved for and granted in that form), deserves most attentive consideration.

Argued on the day after *Vaughan* v. *Weldon* was decided.

Facts of case.

Rule for a Prohibition made absolute with costs against the Plaintiff.

Lord Coleridge, C. J.

The first proposition laid down by Lord Coleridge is that, to entitle a plaintiff to sue in the Mayor's Court, the whole of the cause of action must have arisen within the jurisdiction. That no doubt correctly expresses the law as to the Mayor's Court jurisdiction at the time the Mayor's Court Procedure Act was passed, but to lay it down as a rule applicable to all claims, whether below or above £50, is either to ignore altogether a most important section in a statute passed expressly to extend the powers of a local Court, or to impute to the Legislature the intention of at once taking away from a defendant the right to object to the jurisdiction by any proceeding whatsoever, and leaving it open to a Superior Court to prohibit the

proceedings in the Inferior Court on the application of a stranger. Be that as it might, that was the rule invariably followed in the Court of Common Pleas in every case brought there from the Mayor's Court. Some of the goods in this case were received in Tooley Street, which appears not to be in the City or the liberties thereof. But then others, again, were received in the City. In respect of all the goods, however,—the order having been given at Poplar—some part of the cause of action arose out of the jurisdiction. The Common Pleas rule, therefore, applied, and the writ for a prohibition must go. Brett, J., doubted at first whether it might not be said that an entire cause of action as to some of the goods arose within the jurisdiction, but the doubt was removed by the argument that where goods are ordered outside the City (inasmuch as order includes price), part of the cause of action at all events arises outside the jurisdiction.

Brett, J.

So far we have been dealing with cases in which both the decision and the *ratio decidendi* were wrong. The next case in the series is one where the conclusion was right, while the *ratio decidendi* was wrong. In *Wirth* v. *Austin* (*s*), argued before Lord Coleridge, C.J., and Grove and Archibald, JJ., in June, 1875, the plaintiff sued to recover principal and interest due on two cheques for £20 and £12 respectively, purporting to be drawn by the defendant in Huddersfield on a bank having agents in London, where in fact the defendant had no funds. The cheques had been returned marked "not provided for." After judgment had been signed

Wirth v. *Austin.* (June, 1875.)

Facts of the case.

(*s*) L. R. 10, C. P. 689; 32 L. T. 669.

by the plaintiff in the Mayor's Court, a rule for a Prohibition was obtained on the usual affidavit that the cause of action *did not wholly arise* within the jurisdiction of the Mayor's Court, and that the defendant did not reside or carry on business within the City, &c. After cause shown, the rule was discharged on the ground that, as the plaintiff was not obliged to prove presentment and dishonour in the circumstances of the case (*t*), he was able to sustain his action without giving evidence of anything that occurred outside the jurisdiction. The allegation, therefore, in the affidavit of the defendant's attorney that the cause of action did not wholly arise within the jurisdiction could not be sustained, and there was no ground for a prohibition. If in the circumstances presentment and dishonour had been a necessary part of the plaintiff's cause of action, inasmuch as the cheques were presented and dishonoured outside the City, the cause of action could not have been said to have *wholly* arisen within the jurisdiction. Would the rule in that case have been absolute with costs? Undoubtedly it would, on the ground given in *Gold* v. *Turner* (*u*), unless the Court were prepared to reverse their own decision in that case.

Cause shown. Rule discharged.

Ellis v. *Fleming.* (Jan., 1876.)

The same observation applies to the case of *Ellis* v. *Fleming* (*x*), which came before Brett, Grove, and Denman, JJ., in January, 1876, after the Court of Common Pleas had been converted into a Division of the High Court of Justice. This was an action

(*t*) See *Terry* v. *Parker*, 6 A. & E. 502, and *Carew* v. *Duckworth*, L. R. 4, Ex. 313; 38 L. J. (N. S.) Ex. 149.

(*u*) See *ante*, p. 46.

(*x*) L. R. 1 C. P. D. 237; 45 L. J. C. P. 512; 24 W. R. Dig. 144.

in the Mayor's Court on a guarantee by the defendants for an attorney's bill of costs, and a Rule for a Prohibition had been granted in the Common Pleas Division on the usual affidavit that the whole cause of action did not (in other words, that part of the cause of action did) arise within the City. On showing cause, the plaintiff's counsel, instead of uselessly contesting the point of jurisdiction, agreed to waive so much of his claim as related to work done out of the City, for which, therefore, according to the doctrine of the Common Pleas, the plaintiff could not sue in the local Court. The Court, not without some misgiving on the part of at least one learned judge, permitted this course to be adopted, and discharged the Rule *without costs*. Grove, J., appears to have doubted whether payment by the plaintiff of the costs of the Rule ought not to have been made the condition on which it was allowed to be discharged; and, indeed, it seems that logically the learned judge was right in so thinking. Either the defendant was right in asking for a Prohibition, or he was wrong. If he was right—as, according to the Common Pleas, he was—when he obtained the Rule *nisi*, he was still right when the plaintiff, to avoid the otherwise inevitable Rule absolute, abandoned the objectionable portion of his claim. If the plaintiff had not waived that part, the Rule must have been made absolute with costs against him. Why, then, should the defendant be left to pay his own costs, which would not have been incurred if the plaintiff had not by his own admission claimed more in the first instance than, in the local Court, he was entitled to recover? It is

Judgment of C. P. D.

possible that the apparent inconsistency between the decision and the order as to costs may be explained by that which is clearly discernible throughout the observations of Brett, J., namely, a desire to modify the stringency of the rules laid down by the Court of Common Pleas and bring them more into harmony with the rules as to inferior jurisdictions followed by other Divisions of the High Court. The series of cases beginning with *Quartly* v. *Timmins* (*y*) and ending with *Ellis* v. *Fleming* (*z*) may be dismissed with the observation that, although not by name overruled by the Court of Appeal in the case of *Hawes* v. *Paveley* (*a*), every one of those cases must be regarded as having been tainted with the same vice which was eradicated by the last mentioned decision. The Common Pleas Judges did not to say that the 12th section of the Mayor's Court Act was to be regarded as a dead letter. They simply ignored the fact that, unless they were to hold that the Legislature, in enacting that no plea to the jurisdiction should be allowed in a certain class of cases, must have intended to confer an absolute jurisdiction to try any case which came within that class, it was, practically, the same thing as if they in terms decided that the enactment had no meaning. The *fons et origo mali*, beyond all question, is to be looked for in the unskilfulness of the draftsman who, having it in mind to make the Legislature say that after the passing of the Act the jurisdiction of the Mayor's Court in certain cases should not be challenged by any pro-

Criticism of cases overruled by *Hawes* v. *Paveley*.

(*y*) *Ante*, p. 42.
(*z*) *Ante*, p. 48.
(*a*) *Ante*, p. 10.

ceeding whatsoever either in or out of that Court, selected as the vehicle for conveying that idea the words "*no plea* to the jurisdiction shall be allowed."

Before leaving the 12th Section, it will be necessary to review the decisions of the Common Pleas upon the question how far a mere statement of account in the City constitutes a cause of action or part of a cause of action arising therein, so as to bring a case within the terms of that section?

Review of authorities as to accounts stated in City.

In *Evans* v. *Nicholson* (*b*), after a verdict for the plaintiff in the Mayor's Court in a claim for goods sold and delivered, a Rule for a Prohibition was obtained in the Court of Common Pleas on the usual ground that the whole cause of action did not arise within the City. On cause being shown, the Rule was discharged on the ground that, although the cause of action founded on the contract had arisen partly out of the jurisdiction—the delivery being outside the City—there was, nevertheless, an entire cause of action founded on an account stated within the jurisdiction. Several letters were posted by the defendant without, which were received by the plaintiff within, the jurisdiction; inasmuch as those letters contained an absolute acknowledgment of the defendant's liability to pay the amount claimed, they were conclusive evidence of an account stated between the parties. There was no doubt that the account was stated at the time when and at the place where the letter containing the acknowledgment was posted. But, as Lord Coleridge observed, it does not follow that, because an account has been stated once, it

Evans v. *Nicholson.* (June, 1875.)

The *ratio decidendi.*

(*b*) 33 L. T. N. S. 778.

may not be stated again; and, accordingly, it was held that the letter was a continuing statement of account, which took effect as a statement of account at the time when and at the place where it was received. But, as the letter was received by the plaintiff in the City, it followed that the account was stated in the City; and the only question was whether an action in the Mayor's Court could be maintained simply upon *proof of* an account stated within the jurisdiction. The Court (Lord Coleridge, C.J., Denman, Archibald, and Lindley, JJ.) were all agreed that it could, and discharged the Rule, not without some doubt on the part of Denman, J., as to whether the statement of accounts was sufficiently proved by the production of a written document in the handwriting of the defendant, which the plaintiff swore had been delivered to him at his place of business in the City in the ordinary course of post. The learned judge is reported as having suggested that he would have been more satisfied if there had been some evidence of the account being "stated to some person." It is difficult to see how better evidence of a statement *to some person* could have been given than the production of a letter written and sent by the defendant *to the plaintiff himself.*

Judgment of C. P.

Wallace v. *Allan.* (June, 1875.)

On the day following that on which *Evans* v. *Nicholson* was decided, another case of the same kind came before Lord Coleridge and Grove, Archibald, and Lindley, JJ. In *Wallace* v. *Allan* (*c*) the claim did not exceed £50, and the defendant carried on business in the City. The Mayor's Court, therefore, had an

Was within section 12.

(*c*) L. R. 10 C. P. 607; 44 L. J. C. P. 351; 32 L. T. N. S. 83; 23 W. R. 703.

absolute jurisdiction to try the cause. But, because the plaintiffs resided at Brixton, in Surrey, and had there carried on the education of the defendant's daughters in respect of which the claim was made, a Rule had been granted for a Prohibition, although the defendant had taken no step until judgment had been signed and execution issued and the Serjeant-at-Mace was actually in possession. The affidavit of the plaintiffs showed that before action the defendant had, at his place of business in the City, admitted the debt, and promised and made appointments to pay it, which promises and appointments he had failed to keep. It was submitted, on the authority of *Evans* v. *Nicholson* (decided on the previous day), that this was evidence of an account stated in the City, and was enough to give the Mayor's Court jurisdiction. Lord Coleridge, however, appears at once to have disposed of this point by remarking that the mere fact that a part of the cause of action arose in Surrey was sufficient to entitle the defendant to a Prohibition, where, as here, the application was not made after trial and verdict. His lordship appears to have had some doubt whether it would have been sufficient if the cause had been already tried and had resulted in a verdict for the plaintiff. The Rule was, therefore, made absolute, with costs. No further observation needs to be made upon this case than that it appears to be inconsistent with *Evans* v. *Nicholson*, and that, inasmuch as *Evans* v. *Nicholson* has been several times approved and followed, *Wallace* v. *Allan* cannot be regarded as an authority on this question of jurisdiction, except to the extent of sup-

Lord Coleridge, C.J.

What was decided in *Wallace* v. *Allan*.

porting the proposition that *a mere admission of liability* within the City will not sustain a claim founded on accounts stated. That is the decision in *Wallace* v. *Allan*, according to Brett, J.; as to which it may be remarked that a report of a decision by four learned judges in support of a self-evident proposition was scarcely needed. "A mere admission of liability" —if by that is meant a general admission of indebtedness, without any mention of the specific amount of the debt—is some evidence of an account stated, but is certainly not conclusive evidence of it. It follows, therefore, that, if the only evidence in support of a claim founded on an account alleged to have been stated at a particular place is insufficient to prove that an account was stated anywhere, it will *a fortiori* be insufficient to prove that it was stated at that particular place.

Taylor v *Jones.* (Nov., 1875.)

In *Taylor* v. *Jones* (*d*) again, no question as to jurisdiction ought to have arisen, inasmuch as the alternative condition of residence, &c., within the statutory limits was satisfied by the defendant. There was no question that part of the cause of action arose in the City, as the goods had been delivered to the defendant there. The main question discussed in the case was whether the order for goods was, for the purposes of jurisdiction, to be treated as an order given in the City, where the letter was posted, or as an order given in Surrey, where the letter was received by the plaintiff. If it was to be treated as having been given in the City, then the whole cause of action arose within the jurisdiction, and, according to the then received doc-

Question for the Court.

(*d*) L. R. 1 C. P. D. 87; 45 L. J. C. P. 110; 34 L. T. N. S. 131.

trine of the Common Pleas, a Prohibition would not lie. If it was to be treated as having been given in Surrey, then only part of the cause of action arose within the jurisdiction, and, according to the same doctrine, a Prohibition would lie. For the defendant an attempt was made to extend the decision in *Evans* v. *Nicholson* (*e*) (which decided that a letter containing a statement of accounts spoke when and where it was received) into a decision that a letter containing an order spoke *only* when and where it was received. It is needless to add that this view of *Evans* v. *Nicholson* was not adopted, and could not have been adopted, by the Court, inasmuch as such a doctrine would have been directly in the face of the decision in *Harris's Case* (*f*) and the other great cases which were there reviewed and approved. It had been decided in *Dunlop* v. *Higgins* (*g*) that a letter containing an offer speaks *from* the time when and *from* the place where it is posted, and it was upon that principle, according to Archibald, J. (*h*), that *Evans* v. *Nicholson* was decided. When the Court, therefore, affirmed the decision of Lush, J., at chambers, setting aside the Writ of Prohibition (taken out of the Petty Bag Office in Vacation) on the ground that, the order and delivery being both in the City, the whole cause of action arose within the jurisdiction, they were not overruling *Evans* v. *Nicholson*, while they were following *Dunlop* v. *Higgins*. It is true that Amphlett, B., made his decision turn on the accident that no

Attempt made to extend *Evans* v. *Nicholson*.

Judgment of *Amphlett, B.*

(*e*) See *ante*, p. 51.
(*f*) L. R. 7 Ch. App. 587; 41 L. J. (N. S.) Ch. 621; 26 L. T. 781; 20 W. R. 690.
(*g*) 1 H. L. C. 381.
(*h*) At p. 91 of the Law Report of *Taylor* v. *Jones*.

letter was written by the plaintiff accepting the defendant's order. As the plaintiff traded in Surrey, any such letter would probably have been posted there, and in that case Amphlett, B., was prepared to hold that the contract was made where the offer was accepted; in other words, that part of the cause of action arose in Surrey. But was the offer accepted in Surrey in such a sense that it cannot be said with equal correctness to have been accepted in the City? The letter containing the order began to speak in the City, where and when it was posted, but it continued speaking until it was received by the person to whom it was sent. Why should it not be said that the answer to that letter, although it began to speak from the moment it was posted in Surrey, continued speaking until it reached the defendant in the City? On the principle of *Evans* v. *Nicholson*, such a doctrine would be sound law, as well as good sense.

Taylor v. *Nicholls.* (Feb., 1876.)

In *Taylor* v. *Nicholls* (*i*) the defendant did not dwell or carry on business in the City, so that, unless it could be shown that the cause of action either wholly or in part arose therein, the Mayor's Court was liable to a Prohibition.

No jurisdiction except on accounts stated.

The only ground on which it was attempted to show that part of the cause of action arose in the City was that a letter containing what amounted to a statement of accounts by the defendant was received by the plaintiff at his place of business in the City. The Court (Brett, Archibald, and Lindley, JJ.) discharged the rule

Judgment.

(*i*) L. R. 1 C. P. D. 242; 45 L. J. C. P. 455; 24 W. R. 673. It is obvious from a comparison of the three reports that the judgment of Brett, J., has been mutilated in the report as it appears in the L. R. The Law Report, moreover, omits the reason assigned by Brett, J., for giving no costs to the plaintiff.

without costs on the ground that the letter was *some evidence of* an account stated in the City, and was consistent with the existence of a cause of action arising there. They did *not* decide that the claim founded upon "accounts stated" was proved by the letter of the defendant, but that, until the action was tried, the facts were not so clear as to justify a Prohibition. In *Evans* v. *Nicholson*, the application was made after verdict, and, consequently, the Court there had materials, which here did not exist, for arriving at the conclusion that there was a complete cause of action which arose within the City. An attempt was made by Archibald, J., to "harmonize" the cases of *Evans* v. *Nicholson* and *Wallace* v. *Allan* by remarking that the reference made to a trial and verdict in those cases "was addressed to the circumstances under which they came before the Court."

Result of the foregoing decisions.

The result of the authorities up to this point seems to be that the High Court will not prohibit the Mayor's Court from *proceeding to try* a claim founded on an account stated in the City, where there is some evidence to show (1) that there was a statement of accounts; and (2) that it was made in the City. There is no authority, thus far, for the proposition that the High Court will not prohibit the Mayor's Court from issuing execution, or will not set aside an execution issued, on a judgment obtained *after a trial* in which the evidence did not support the count in the declaration "upon accounts stated," and showed, moreover, that, apart from the alleged statement of account, there was no cause of action which could be said to have arisen in the City. Therefore a plaintiff who should sue in the

Mayor's Court a defendant dwelling and carrying on business outside the City and the liberties thereof upon a claim for the price of goods sold and delivered, where both order and delivery took place outside the City, incurred the risk of a Writ of Prohibition setting aside his verdict, judgment, and execution, if it should appear from the evidence called at the trial that the only ground for the assumption of jurisdiction by the Mayor's Court was that the defendant wrote a letter which the plaintiff received in the City and in which the defendant admitted his liability to pay the amount claimed. But it must be remembered that at this stage the Court of Appeal had not decided the case of *Hawes* v. *Paveley*.

Bennett v. *Cosgriff.* (Feb., 1878.)

In *Bennett* v. *Cosgriff* (*k*) part of the goods, for the price of which the action was brought, were ordered by a letter written and posted by the defendant in Liverpool, but received by the plaintiff in the City of London, where in fact he carried on business. It was successfully contended on the part of the plaintiff, upon the argument of the Rule for a Prohibition obtained by the defendant, that, according to *Evans* v. *Nicholson*, the order for these goods must be taken to have been given in the City, where the plaintiff received it. For the defendant *Taylor* v. *Jones* was relied on, where a letter containing an order for goods was held to speak in the place where it was posted (*l*), and it was suggested that *Evans* v. *Nicholson* had been virtually overruled by the later decision. The Court, however (Denman and Lindley, JJ.), pointed out that the two cases were not really inconsistent.

Evans v. *Nicholson.*

Was said to have been overruled by *Taylor* v. *Jones.*

(*k*) 38 L. T. N. S. 177.

(*l*) See *ante*, p. 54.

The view taken in *Evans* v. *Nicholson* had been adopted and approved (as was pointed out by Lindley, J.) in *Reg.* v. *Rogers* (*m*) by the Court for the consideration of Crown Cases Reserved, and was now deliberately re-affirmed. The only other point to be noticed in *Bennett* v. *Cosgriff* is that it is the first case in which the Common Pleas recognised the doctrine laid down in *Hawes* v. *Paveley*, that the Mayor's Court has an absolute jurisdiction to try claims not exceeding £50 where *part* of the cause of action arises within the City or the liberties thereof.

Reg. v. *Rogers* (Nov. 1877).

The only other sections of the Mayor's Court Procedure Act which have the effect, directly or indirectly, of enlarging the jurisdiction of the local Court, and which therefore demand notice here, are those referred to at the outset of this inquiry (*n*)—sections 13, 32—34, 38, and 48. By the 13th section the Court is empowered, in cases where the cause of action arises within its jurisdiction, to order service on the defendant in any part of England and Wales, and, provided a copy of the order is served at the same time, the defendant is thereby effectually brought within the local jurisdiction, albeit he neither dwells nor carries on business therein. It is for the plaintiff, who seeks to take advantage of this extension of jurisdiction, to make it "satisfactorily appear by affidavit" that the cause of action arose (*o*) within the jurisdiction; it is for the Court, when satisfied of that, to exercise its discretion by making or refusing to make the desired order, as it shall think fit.

Other sections of M. C. L. P. Act whereby object of Act is carried out.

Section 13. Plaint may be served in any part of England or Wales.

Plaintiff must show cause of action arose within jurisdiction.

The order is in discretion of Court.

(*m*) 47 L. J. M. C. 11; 37 L. T. N. S. 473.

(*n*) *Ante*, p. 6.

(*o*) As to what is meant by a cause of action "arising" at a given place see *ante*, pp. 32—41.

Section 32. Jurisdiction over Third Parties.

Inter-pleader summons

By the 32nd section the Registrar is authorized, on the application of a defendant who has not pleaded, and who disclaims any interest in the subject-matter of the suit, to issue a summons calling on the third party who has sued, or is expected to sue, for the right which is claimed by the plaintiff, to appear and maintain or relinquish his claim. Such summons may be served in any part of England or Wales, and, in default of appearance after being duly served therewith, the third party (and all persons claiming by, from, or under him) may be declared by the Court to be for ever barred from prosecuting his or their claim against the defendant or his representatives.

may be served beyond the local jurisdiction.

Section 34. Claim of Third Party not appearing may be barred.

Section 38. Jurisdiction over person ordered to be committed under the Act, *wherever found.*

By the 38th section the officer charged with the execution of an order of committal made under the Act is authorized to take the person against whom such order shall have issued, *wherever such person shall reside or be*, that is to say, whether he be found within or out of the jurisdiction of the local Court, provided he is within the jurisdiction of the High Court of Justice—that is to say, in some part of England or Wales. This section is now practically inoperative.

Section 48 provides for removal of judgments, rules, or orders into Superior Court.

The 48th section extends the powers of the Mayor's Court by providing that a final judgment obtained in, and any rule or order made by, that Court, whereby costs become payable to any person, shall become and be of the same force, charge, and effect as a judgment recovered in, or a rule or order made by, one of the Superior Courts, after the Writ of Execution upon such judgment or the rule or order has been sealed by the Sealer of Writs of any of the Superior Courts; and all

reasonable costs of sealing are recoverable as if they were part of such judgment, or rule, or order. The only proviso by which this extension is guarded is one by which judgments, rules, and orders so removed into the Superior Court are prevented from affecting any lands, tenements, &c., as to purchasers, mortgagees, or creditors any farther than they would have done if they had not been removed, unless and until a Writ of Execution thereon has been actually put into the hands of the Sheriff.

Proviso.

II. Judicature Act, 1873, (36 & 37 Vict. c. 66) §§ 88—91.

How far extended by Judicature Act.

Mayor's Court affected by provisions affecting Inferior Courts as a class.

The next question to be considered is how far the local jurisdiction of the Mayor's Court has been, either expressly or in effect, extended by the Judicature Acts. Part VI. of the Act of 1873 is intituled "Jurisdiction of Inferior Courts;" as the Mayor's Court undoubtedly ranks in that class, it follows that all the provisions contained in those sections of the Act (§§ 88–91) which affect the Inferior Courts as a class must apply to and affect the Mayor's Court, unless the context clearly shows that they are not intended to apply thereto.

Section 88.

Power to confer jurisdiction on Mayor's Court by Order in Council.

By the 88th section any jurisdiction in Equity or Admiralty which may be conferred on the Mayor's Court (*c*) by Order in Council—being such as then was or might thereafter be exercised by any County Court—is to be exercised in the manner directed by the Judicature Act.

Provides for exercise of jurisdiction, if and

It is to be observed that this direction as to the manner of exercising its Equity or Admiralty jurisdiction applies only to such jurisdiction as may be considering the provisions of these sections.

(*c*) For brevity's sake the words "Mayor's Court" have been used instead of "Inferior Court" in con-

when conferred.

ferred on the Mayor's Court by Order in Council *under that section* of the Act. The jurisdiction, moreover, which "it shall be lawful for her Majesty to confer" is measured by the County Court standard, if by the words, "the same as any County Court now has, or may hereafter have," is to be understood such jurisdiction as is now exercised, or may hereafter become exercisable by a County Court. The direction, therefore, in no way affects the exercise of that jurisdiction in Equity which the Mayor's Court possessed at the time the Judicature Acts were passed, and which had been exercised for centuries (on what is called its "Equity side") concurrently with and in subordination to the High Court of Chancery, and (since the passing of the Mayor's Court Act) subject to such rules and regulations respecting the removal into Chancery of suits commenced on the Equity side of the Mayor's Court as the Master of the Rolls should draw up under the powers given to him by the 20th section of that Act (*d*). That Equity jurisdiction, therefore, remaining untouched, it will be convenient to consider shortly its nature and extent, although, by reason of the other provisions of the Judicature Act presently to be considered (*e*), it is highly improbable that any more "bills" will be filed on the Equity side of the Mayor's Court.

Must be a jurisdiction of the County Court standard.

Mayor's Court not touched on its Equity side.

Nature and extent of Equity jurisdiction prior to Judicature Acts.

Rule before M. C. L. P. Act, 1857. No jurisdiction to grant relief

Before the Mayor's Court Act it was necessary, in order to give that Court jurisdiction to grant relief on its Equity side, that the cause of action (which must be here understood to mean all the facts which gave the plain-

(*d*) M. C. L. P. Act, s. 20. No such rules have ever been drawn up by the M. R. for an obvious reason.

(*e*) See *post*, pp. 65 – 67.

tiff his right to relief) accrued within the local jurisdiction. Did anything in the Act alter that rule as to suits on the Chancery side of the Court? Clearly, the 12th section—which deals with "actions" wherein the plaintiff seeks to recover debt or damages up to £50—does not affect suits praying for relief of various kinds in which the recovery of a sum of money is not an essential element. It is equally clear that a defendant in such a suit is not forbidden by section 15 from taking his objection to the jurisdiction of the Mayor's Court, if he so please, by applying for a *certiorari* or special order under the provisions of sections 20 and 52 (*f*). The 20th section prohibits the removal into Chancery of any suit commenced on the Equity side of the Mayor's Court without the *special order* of one of the Chancery judges "upon application for that purpose made;" and it further limits the discretion of the judge to whom such application is made by providing that he shall not make the order of removal if he "shall consider that the matter in question in the said suit is *fit to be tried* in the Mayor's Court." What is meant by the words "fit to be tried" is not quite free from doubt. At first sight one would think that the Legislature thereby intended that, in all cases where, from the absence of any complexity in the facts and the elementary character of the relief sought, there was no reason to suppose that the Mayor's Court would not administer Equity quite as efficiently as (and far more cheaply than) the High Court of Chancery, the

where subject-matter out of City.

Section 12 of M. C. L. P. Act, 1857, does not apply.

Nor does section 15 interfere with a defendant in such suit who applies for a *certiorari* or a special order of removal under sections 20 and 52 of the same Act.

Section 20 considered.

No suit to be removed into Chancery if "fit to be tried" in the Mayor's Court.

What is meant by a suit being fit to be tried in a local Court.

(*f*) Neither mode of taking the objection being a "proceeding" in the Mayor's Court within the meaning of section 15. See *ante*, pp. 8—25.

exercise of its equitable jurisdiction should not be interfered with. The mere fact that the Mayor's Court, in giving the relief sought, would be dealing with persons and causes of action not within its jurisdition would scarcely make the case in that sense "unfit to be tried" in that Court, although it might form good ground for a Writ of Prohibition.

M. C. L. P. Act, s. 52. Three ways by which a cause may be removed from Mayor's Court. *Davies* v. *M'Henry*. (Nov. 1867.) Facts.

The 52nd section prohibits the removal of *any cause* from the Mayor's Court otherwise than by a Writ of *Certiorari*, the order of a Common Law judge, or the special order of a Chancery judge. In the case of *Davies* v. *M'Henry* (*g*) the cause was removed by *certiorari*. In that case a Paris banker sued Mrs. Davies in the Mayor's Court for two sums advanced by him on drafts drawn on bankers in the City, and caused an attachment to be issued against her banking account with Robarts & Co. She put in bail, paid a sum into Court, and pleaded coverture. The plaintiff went on, and was nonsuited. Thereupon he filed a bill on the Equity side of the Mayor's Court, praying that he might be paid his debts out of Mrs. Davies's separate estate. Mrs. Davies then filed a bill of *certiorari* in Chancery against the banker and her husband, praying that the suit commenced on the Equity side of the Mayor's Court might be removed into the Court of Chancery. The grounds of the prayer were not that the matter in question in the said suit was not "fit to be tried" in the Mayor's Court, but that neither did any of the parties reside, nor was the subject-matter of the suit, within the jurisdiction of that Court, and that the cause of action did not arise there. The usual process of

(*g*) L. R. 3 Ch. App. 200; 17 L. T. 307.

proving the suggestions in the bill was gone through, and the suit was retained and a decree granted in the High Court of Chancery.

Sections 89 and 90.

We come now to two very important sections of the Judicature Act, as regards their effect on the administration of justice in the Mayor's Court.

Mayor's Court enabled and directed to give relief to plaintiffs and defendants within its jurisdiction to same extent as High Court of Justice.

By the 89th Section that Court, as one of the Inferior Courts having jurisdiction at Law and in Equity, is both empowered and directed (as regards all causes of action within its jurisdiction for the time being) to grant, in any proceeding before it, such relief, redress, or remedy, or combination of remedies, either absolute or conditional, and to give such and the like effect to every ground of defence or counterclaim, equitable or legal, as fully and amply as might or ought to be done in the like case by the High Court of Justice.

Observations on section 89.

Whatever may be thought of this section from the point of view of a grammarian, its meaning is plain enough. Its provisions do not apply to a cause of action which is not within the local jurisdiction. Nor do they give the local Court power to deal with matters that are not involved in some "proceeding" before itself. But, given the jurisdiction and the proceeding, it has the same powers as the High Court of Justice (*h*), and is, moreover, bound to exercise them.

As to plaintiffs.

As regards plaintiffs, whatever relief, redress, or remedy might be had in the High Court, is to be granted by

(*h*) Among the powers conferred by this section on the "Inferior Courts having jurisdiction at Law and in Equity," is the power of enforcing their decrees by attachment in case of disobedience; *per* Kelly, C. B., and Pollock, B., in *Martin* v. *Bannister*, *Law Times*, January 25, 1879, p. 228. But this power was already possessed by the Mayor's Court under section 81 of C. L. P. Act, 1854.

As to defendants.

the Mayor's Court. As regards defendants, whatever would supply a ground of defence or counterclaim, equitable or legal, in the High Court, is to have the same effect given to it (up to a certain point) in the Mayor's Court.

Section 90.

Mayor's Court competent and bound to dispose of matter in dispute between plaintiff and defendant, even where defence involves a matter outside jurisdiction, provided, in so doing, it gives no relief to defendant which it could not give him if he were plaintiff.

By the 90th section it is provided, on the one hand, that the competence and the duty of the Mayor's Court to dispose of the whole matter in controversy—so far as plaintiff and defendant are concerned—shall not be affected by the accident that, in any proceeding before it, a defence or counterclaim involves matter beyond the local jurisdiction, and, on the other hand, that no relief exceeding that which the Mayor's Court has jurisdiction to administer shall be given to the defendant upon any such counterclaim. When that point is reached at which the Mayor's Court, by giving further relief to a defendant on his counterclaim, would be going beyond the relief which it has jurisdiction to administer, a provision is made whereby, on the application of any party (*i*), the High Court of Justice may order the whole proceedings to be transferred to itself, where they are to be continued and prosecuted, as if they had been originally commenced therein.

Where Mayor's Court can give no further relief to defendant, any party may apply for an order to transfer whole proceedings to High Court of Justice.

Section 91.

By the 91st section it is provided that the several rules of law enacted and declared by the Judicature Act, 1873, are to be in force and to receive effect in the Mayor's Court, so far as the matters to which such rules relate shall be cognisable by (*i.e.*, within the jurisdiction of) that Court. What those rules of law

(*i*) Such application (which cannot be made by a stranger) must not be *ex parte*, but on notice, and therefore, if made at Chambers, by summons.

prescribe may be ascertained by a reference to section 25 of the Judicature Act, and the several sub-sections thereof (*k*). They have no application where the matters to which they relate are matters not cognisable by the Mayor's Court; but, on the other hand, where the matters to which they relate are matters of which the Mayor's Court may properly take cognisance, those rules are to be in force and to receive effect in that Court.

Rules of law enacted and declared by Judicature Acts to be in force in Mayor's Court.

The effect of the two sections (89 & 90) read together on the jurisdiction of the Mayor's Court is so clear that it scarcely needed any authority to support the proposition that this jurisdiction to *entertain* claims (when set up by defendants) not properly within the cognisance of the local Court was conferred solely with the view of enabling the local Court to dispose of litigation so far as it is competent to do so, and was not intended to alter the status of the Court as a purely local tribunal. If authority were required for that proposition, it is to be found in the case of *Davis* v. *the Flagstaff Silver Mining Company of Utah* (*l*).

Object of this extension of jurisdiction.

Davis v. *Flagstaff Silver Mining Co. of Utah.* (March, 1878.)

This was an action on two promissory notes made by the defendant Company's Secretary for £100 and £400 respectively. The defendants pleaded never indebted, payment; set off, and, by way of counterclaim, set up a claim for £89,000 for money had and received. The plaintiff applied by summons at Chambers for a prohibition, and Field, J., referred the summons to the Common Pleas Division. Grove and Lindley, JJ.,

The nature of the plaintiff's claim, and defendant's counterclaim.

Plaintiff applied for prohibition.

(*k*) See Wilson's Judicature Acts, 2nd Ed., pp. 25—33.

(*l*) L. R. 3 C. P. D. 228; 47 L. J. C. P. 503; 38 L. T. 769; 26 W. R. 431.

Refused by C. P. D. Grounds of refusal.

refused to order a prohibition, on the ground that the Legislature intended to enable a defendant, sued in an Inferior Court, to set up, by way of answer to the plaintiff's claim, a counterclaim against the plaintiff which he could not have set up as an original claim except in the High Court. He was not to be deprived of the right to rely on the defence afforded by his counterclaim because the plaintiff elected to sue him in a Court of limited jurisdiction. So far the Mayor's Court jurisdiction was enlarged for the benefit of defendant. But this extension did not go a step farther. The local Court might *entertain* a cause of action arising altogether beyond the local jurisdiction, but was not to grant relief to the defendant beyond the point at which his claim overtook the plaintiff's; in other words, it was not at liberty to deal with the defendant as if he were the plaintiff in a cross action. That such was undoubtedly the right construction of the two sections read together is made abundantly clear by the judgments of Brett, Cotton, and Thesiger, L.JJ., in the Court of Appeal. According to Brett, L.J., every section and every rule in the Judicature Acts is to be construed with reference to the fundamental object which the Legislature had in view—that object being to enable *any* Court before which any controversy is brought to determine all matters in dispute between the parties. Where that object is attainable in an Inferior Court without encroaching on the jurisdiction of the High Court of Justice, it is unnecessary to say that the Inferior Court is both competent and bound to dispose of the whole matter in controversy. Where that

Judgment of C. P. D. affirmed in C. A.

Brett, L.J.

Fundamental aim of Judicature Acts.

object is not attainable in the Inferior Court without transgressing the limits of the local jurisdiction, the Inferior Court must be content to discharge the duty cast upon it by the Legislature of disposing of the whole matter in controversy only "so far as relates to the demand of the plaintiff and the defence thereto." So long as it does not overstep the line drawn by section 90, the Mayor's Court is in no danger of a prohibition from the High Court. In the particular case before the Court no act (as Thesiger, L.J., observed) had been committed by the Mayor's Court showing that it had exceeded, or was about to exceed, its duty or its jurisdiction. Up to that moment, therefore, the plaintiff had no ground for his application, which was accordingly refused. If, however, the plaintiff had waited until the Mayor's Court had committed an excess of jurisdiction by giving the defendant relief *quâ* plaintiff on the counterclaim, his application would have been justifiable, and, if the High Court had not ordered a prohibition to go, it would certainly, on the application of either party, have ordered the proceedings to be transferred from the Mayor's Court to one of the Common Law Divisions under section 90.

Line is drawn by section 90.

Plaintiff's application assumed that Mayor's Court would exceed its duty and its jurisdiction. That assumption being unwarrantable, application was premature.

The subject of jurisdiction may be dismissed with the remark that, subject, on the one hand, to the limitations imposed by the rules applying to Courts having no general but only a local jurisdiction, and to the effect, on the other hand, of statutory enactments intended to enlarge its powers as a local Court, the Mayor's Court has at Common Law a concurrent jurisdiction with the High Court of Justice in all

General proposition as to Mayor's Court jurisdiction.

personal actions, no matter what may be the amount claimed, whether founded on contract or on tort, and also in Ejectment. It seems, however, that it has no jurisdiction to try an action of Replevin, over which, within the City of London, the Court of Hustings still retains exclusive jurisdiction (*m*).

(*m*) See Kerr's Blackstone, vol. iii, Appendix.

PART II.

THE ORDINARY PRACTICE AND PROCEDURE OF THE MAYOR'S COURT.

1. PROCEEDINGS UP TO TRIAL.

(A.) *By the Plaintiff* (*a*).

By plaintiff.

THE first step to be taken by a plaintiff, who has satisfied himself that the Mayor's Court has jurisdiction to entertain his claim, is to enter at the Registrar's office what is sometimes called an action. This must give the date of entry, the names of the parties with the capacity (if necessary) in which they sue or are sued, and the amount sought to be recovered. This done, he may procure at the Office a printed form of plaint, which must be filled up with an exact copy of the action, having such particulars of his claim subscribed as in the High Court of Justice would suffice for the indorsement on a writ of summons specially indorsed under Order 3, rule 6 (*b*). These should be preceded by a notice to the defendant of the action

Entry of Action. What must be entered

The plaint.

Particulars of claim.

Notice to defendant.

(*a*) Throughout these notes of Practice and Procedure it will be presumed that the parties appear by solicitor, and unless it is expressly stated to the contrary, by "plaintiff" and "defendant" are meant their respective solicitors.

(*b*) Compare C. L. P. Act, 1852, s. 25; which, however, was applicable only to cases where the defendant was within the jurisdiction. See Wilson's Judicature Acts, 2nd. Ed. p. 140.

having been commenced against him, and that unless he appears within eight days of the service thereof, judgment will be issued against him by default. The document thus filled up is then sealed or stamped with the Mayor's Court seal, and must be personally served on the defendant. Where attempts have been made to serve the defendant personally without success, the Court will, upon an affidavit of the facts, make an order for substituted service, as in the High Court (*c*). Where the defendant is out of the jurisdiction—that is to say, where he neither resides nor carries on business in the City of London, but is to be found in some part of England or Wales—the plaintiff should apply *ex parte* for an order for service out of the jurisdiction, supporting his application by an affidavit from which "it shall satisfactorily appear that the cause of action arises within the jurisdiction of the Court" (*d*). Having obtained his order, he must serve the defendant with a copy of the same, together with the sealed copy plaint served in pursuance thereof, as otherwise the service of a plaint will not be valid or effectual, whereas, provided that is done, "all proceedings in the cause shall be had and taken as if the defendant had been duly served within the jurisdiction" (*e*). Where the defendant is a corporation, the plaint should be served on the secretary or other public officer authorised to accept service (*f*). If, on the expiration of the eight days allowed for appearance in ordinary actions (which are reckoned exclusively of the day of service), or on the expiration of

Must be sealed by the Court, for personal service.

Substituted service may be ordered.

Where defendant is out of jurisdiction.

Service of plaint where defendant is a corporation.

(*c*) See C. L. P. Act, 1852, s. 17, and the notes thereto in Day.

(*d*) M. C. L. P. Act, s. 13. In practice it is sufficient to disclose facts.

(*e*) M. C. L. P. Act, s. 14.

(*f*) Compare C. L. P. Act, 1852, s. 16, and notes thereto, on pp. 14, 15 of Day, 4th. Ed.

the time limited by any order for substituted service, the plaintiff has not received a sealed notice of an appearance having been entered by the defendant, he is entitled to sign judgment without making any search for appearance, and to issue execution for the amount of his debt and costs, which latter are marked on the judgment at the time it is signed.

Where time for appearance has expired plaintiff may sign judgment for default.

If, on the other hand, he receives due notice of defendant's appearance either before the day on which he is entitled to sign judgment, or before he has in fact signed it, he must be prepared to deliver his Declaration, or, if he do not deliver it within four days of receipt of the defendant's demand, to have judgment of non-suit signed against him, with costs, for want of prosecution, unless he has obtained (what he will always get for the asking) an order for further time to declare. Where there are several defendants who have separately appeared, a copy Declaration must be delivered to each of them. Where of several defendants only one has appeared, the plaintiff cannot declare until the others have appeared or have allowed judgment to go by default (*g*). If the plaintiff desire (as it is to be presumed he will) that the defendant should plead, he should indorse his copy Declaration with a demand to that effect, as the defendant is not bound to plead until called on, and as, until and unless notice of such demand has been given, no judgment can be signed for want of plea. This is a four day demand, excluding the day on which it is given.

Where due notice of appearance is received before judgment has been signed plaintiff must go on.

Declaration must be delivered within four days of demand unless further time allowed.

Where more defendants than one.

Demand of plea.

When necessary.

A four day demand.

Together with his Declaration the plaintiff must

(*g*) C. L. P. Act, 1852, s. 33, the provisions of which are applied to the Mayor's Court by Order in Council.

Particulars with Declaration.

deliver his particulars of demand, or, if such particulars cannot be comprised within three folios, such a statement of the nature of his claim and of the amount claimed to be due from the defendant as may be comprised within that number of folios, and as will preclude the defendant from applying for an order for further and better particulars. The penalty attaching to neglect of this precaution is that, if the Court on the defendant's application order particulars to be delivered (where the declaration has been delivered without any), the plaintiff will in any event be allowed no costs in respect of the defendant's application, or in respect of the particulars he may deliver pursuant to the order of the Court (*h*). The plaintiff is not bound by the particulars set out in the notice at the foot of the plaint, but, should the particulars he delivers with or after Declaration not correspond with the former, and should the defendant, on delivery of the later particulars, satisfy the plaintiff's claim by payment, the Court will not allow the plaintiff any costs beyond the costs of plaint and service, if it should be of opinion that the settlement of the action was delayed by reason of the erroneous statement of the plaintiff's demand in the first instance.

Consequences of negligence in regard to particulars.

Particulars with declaration should correspond with particulars on plaint.

Interrogatories may by leave of the Court be delivered with declaration.

If the plaintiff desires to deliver interrogatories to the defendant with his Declaration, he must apply for an order for that purpose under the Common Law Procedure Act, 1854, ss. 51 & 52 (*i*).

Where defendant

If on appearance the plaintiff discover that he has sued the defendant in a wrong name, he may at once

(*h*) Compare R. G. Hil. T. 1853, r. 19. Day's C. L. P. Acts, 4th Ed.

(*i*) These sections apply to the Mayor's Court.

apply for (what will be granted as of course) leave to amend the plaint by substituting the correct name. This is not necessary, as he may, if he pleases, note the error by using the right name in subsequent proceedings followed by the words "sued as, &c.," in a parenthesis.

has been sued in wrong name, plaint should be amended.

If the defendant do not deliver a plea or pleas before the time allowed or limited for that purpose by order of the Court has expired, the plaintiff may sign judgment for default of plea. If, however, the defendant deliver his plea or pleas (duly dated and signed) within the allotted time, the plaintiff may—where no Replication is demanded—give notice of issue joined, which is done by setting the cause down for trial, and giving notice to defendant that he has done so. No other or more formal notice is required.

Judgment for default of plea.

On delivery of plea without demand of replication plaintiff gives notice of joinder of issue and enters cause for trial.

Where a Replication is demanded, the plaintiff must reply within four days, or the defendant may sign judgment for want of prosecution.

Replication where demanded must be delivered within four days.

The defendant being entitled to at least eight days' notice of trial, the plaintiff must take care that his notice (*k*) is given in time to allow the defendant eight clear days exclusive of the day mentioned in the notice. He must not, however, give his notice more than twelve days before the day appointed for the next sittings of the Court.

Notice of trial to be given not less than eight nor more than twelve days before appointed day.

A defendant under terms to take short notice of trial is entitled to four *clear* days' notice, and in such case the plaintiff, if he means to try, should enter the cause at least eight days before the day of trial,

Short notice of trial.

(*k*) This notice need not follow any particular form of words, provided it gives what it purports to give—notice of the *time* and *place* of trial.

Each defendant appearing separately entitled to notice.

although issue has not been joined. Where there are several defendants, appearing separately, each of them is entitled to notice of trial.

Countermand of notice of trial.

If, after giving notice of trial, the plaintiff should find that from whatever cause he will probably not be prepared for trial on the appointed day, he may countermand his notice. This must, in the absence of consent,

Within what time countermand must be given.

be done not later than the fourth day before the day mentioned in the notice of trial, or—where the defendant is to take short notice—not later than the second day. Should the last day for giving countermand be a Sunday, it must be given on the previous Saturday. The

Plaintiff neglecting to countermand and not proceeding to trial pays costs of day.

penalty attaching to neglect in this particular is that a plaintiff who, having given notice of trial, neither gives *due* notice of countermand nor proceeds to trial, must pay the costs of the day incurred through his negligence.

The Record.

The Record—a parchment document, on which is engrossed a transcript of the pleadings up to joinder of issue—is made up by the plaintiff, who adds what is called the *Similiter* ("and the plaintiff doth the like." "Therefore," &c.), and lodged with the Registrar within

When it must be lodged.

two days of the day mentioned in the notice of trial (Sunday not being reckoned as one). Together with the

Copy of particulars lodged at same time.

Record must be lodged a copy of plaintiff's particulars of demand, and of defendant's particulars (if any) of set-off or counterclaim. Unless this be done, the cause will not be entered in the day's list.

Entry of cause in list.

A printed cause list for each sittings of the Court is made out and published at the office, but the plaintiff may enter his cause at any time after such list is made out and published.

(B.) *By Defendant.*

By defendant.

Having been served with a *sealed* copy of the plaint having particulars of claim and a notice calling on him to appear appended thereto, the defendant has eight clear days in which to enter an appearance, unless the eighth day is a Sunday or a *dies non*, in which case his time expires on the evening of the seventh day. As any objection to an irregularity in the plaintiff's procedure is waived by appearance, the defendant, before appearing, must decide whether it is worth his while to take advantage of the plaintiff's ignorance or carelessness. A nullity is not and cannot be made good by waiver, and the defendant, therefore, is not estopped from raising, after appearance, the objection that a particular proceeding is null and void.

Time for appearance eight clear days.

No informality can be objected to after appearance.

An appearance is entered by lodging at the office of the Court a *præcipe* in the prescribed form (*l*), and a sealed notice of the appearance, also in proper form, must then be sent to the plaintiff either by post or by hand, but in any case it must be delivered in time to prevent him from signing judgment, which he is entitled to do on the morning of the ninth day. A notice which does not bear the seal of the Court may be treated by the plaintiff as a nullity, and, if he signs judgment as for default of appearance, the Court will not set aside his judgment unless satisfied by affidavit that the defendant has a defence on the merits, and then

Appearance, how to be entered.

Notice of, how to be given to plaintiff.

If notice not duly sealed plaintiff may sign judgment as if defendant had not appeared.

(*l*) This must be stamped at the time appearance is entered.

Defendant must appear in right name though sued in wrong.

only on payment of costs. If sued in a wrong name, the defendant should appear in his right name, adding the words, "sued as, &c.," in a parenthesis.

The defendant, having duly appeared and having given the plaintiff due notice thereof, must next consider whether he means to resist the claim either wholly or in part. If he is willing to pay part but not the whole, he should at once apply for an order to stay on payment of £—— (naming the sum he tenders, as admitted by him to be due), with costs. He must give the plaintiff notice of this application, and, should the plaintiff not attend, the order to stay will be made on an affidavit of service of notice. If the plaintiff attends and accepts the amount tendered in satisfaction of his claim, the action is at an end, and, if the Court should be of opinion that he claimed more on his plaint than was really due, he will get no more than the bare costs of entering the action. If the plaintiff will not accept the amount tendered or any amount less than that claimed, the Registrar marks the application to that effect, and the action goes on, with this consequence to the defendant that, if the plaintiff subsequently accepts the amount already tendered and refused, the defendant will be entitled to all costs incurred subsequently to the application and refusal, and may set them off against any costs to which the plaintiff may be entitled.

Defendant's course where he admits something to be due.

Application for order to stay.

Where plaintiff accepts sum tendered.

Where plaintiff claims more.

Where defendant admits no part of claim.

If the defendant admits no part of the claim, he should, within two days of his notice of appearance, demand a Declaration, and, unless this demand is complied with in four days or in such extended time as the plaintiff may, on application, obtain for declaring, he may

Demand of declaration a four

sign judgment for want of prosecution, with the usual costs. day demand.

When the Declaration is delivered, the defendant should, if he find that the particulars (if any) sent therewith do not afford him any or sufficient information as to the nature of the plaintiff's claim or the mode in which the amount thereof is arrived at to enable him to say whether he will dispute the whole or part only, he should apply for an order for further and better particulars. If no particulars have been delivered either before or with the Declaration, the defendant, before applying to the Court to order them, should consider whether he really requires any information beyond that afforded by the statement of claim on the plaint and by the declaration. If, after due consideration, he should find himself embarrassed for lack of explicit information, he should apply for an order. But in most cases the better course is not to wait for the Declaration, but to apply for the order before he enters an appearance.

When defendant should apply for further and better particulars.

When defendant should apply for particulars where none have been delivered.

The defendant, having received the Declaration with a demand of plea, has four days in which to plead. There are certain formalities indispensable in the case of Pleas, unless, by replying or joining issue, the plaintiff waives the irregularity. They should be dated the day of their delivery, and be signed by the defendant's solicitor, with his address. If not so dated and signed, the plaintiff may sign judgment as for default of plea (if he has served the defendant with a demand), and a judgment so signed will not be set aside except on an affidavit of merits and payment of costs by the

Defendant must plead in four days after demand.

Must be dated and signed by solicitor.

Consequence of irregularity.

defendant, where there is good reason for believing that his only object in pleading is delay. In the absence of any ground for such belief, a plaintiff who signs judgment as for default of plea where the pleading is merely informal will have no costs of judgment allowed on the defendant's application to set it aside, unless he has pointed out the irregularity to the defendant, and has given him time to cure it.

Practice as to payment into Court.

If the defendant determines to pay money into Court, he must plead such payment, and pay the sum named in his plea to the Registrar, who marks a receipt for the amount in the margin of the plea, which the plaintiff must produce before he can take the money out of Court (*m*). If the plaintiff replies that the sum paid into Court is not enough to satisfy his claim and if the issue thereon be found in favour of the defendant, the latter will be entitled to judgment and costs from the delivery of the Replication. If the plaintiff accepts the sum (paid into Court as to part) in satisfaction of his whole claim, he replies acceptance as to the part to which payment is pleaded, and a *nolle prosequi* as to the residue (*n*). The plaintiff will then have his costs on the payment into Court, while the defendant will be entitled to costs on the *nolle prosequi*. If the plaintiff takes the money out of Court in satisfaction of the cause of action in respect of which it is paid in, and replies to the other pleas of the defendant, he cannot tax his costs as to that part of the cause of action to

Where plaintiff does not accept the sum paid into Court.

Where plaintiff accepts sum in satisfaction of whole cause of action.

Where plaintiff accepts sum in satisfaction of cause of action to which it is pleaded.

(*m*) The money is paid to plaintiff's solicitor on production of the plea receipted as above, and no written authority from the plaintiff is required, as in the Superior Courts under C. L. P. Act, 1852, s. 72.

(*n*) Otherwise the defendant may sign judgment of *non pros. Emmett v. Standen*, 6 Dowl. 591.

which the money has been paid into Court until the action is at an end, when he will be entitled, in any event, to the costs of that part of the claim. If, where the plaintiff elects to go on as to the residue, the defendant succeeds on the plea of payment into Court, the latter is entitled to his costs after, as well as before, Replication, and, on the other pleas, to his costs from the instructions for pleas.

To what costs defendant is entitled if successful on the plea of payment into Court.

A plea or pleas may be withdrawn by the defendant at any time by consent of the plaintiff, but, if this be withheld, only by leave of the Court.

Withdrawing pleas.

Where the defendant pleads a set-off by way of defence to the plaintiff's claim, he should, with his pleas, deliver particulars of set-off, as, if he should neglect to do so and the Court should afterwards, on the plaintiff's application, order them to be delivered, the defendant will in no event be allowed any costs of the application or of the particulars he may afterwards deliver (*o*). When an order for particulars is made, it generally provides that, in default of compliance with the order, the defendant shall not be allowed to give evidence of the set-off at the trial. If, instead of pleading a set-off under the system now obsolete in the Superior Courts, the defendant wishes to set up a counterclaim, equitable or legal, to which the Mayor's Court (under section 89 of the Judicature Act, 1873) is bound to give effect as fully and amply as might or should be done in the High Court of Justice, he must pay due regard to, although not bound by, the Rules of the

Particulars should be given with plea of set-off.

Consequences of neglect in this regard.

Practice where plaintiff makes a cross claim for damages or other relief governed by Rules of Supreme Court.

(*o*) This was the practice in the Common Law Courts under r. 19, H. T. 1853. Day's C. L. P. Acts, ed. 4.

Supreme Court scheduled to the Act of 1875, the most important of which, perhaps, is that which requires a defendant, who seeks to rely on any facts as supporting a right of set-off or counterclaim, to "state specifically that he does so *by way of* set-off or counterclaim" (*p*).

Difference between set-off and counter-claim.

The practical difference between a set-off and a counterclaim in the Mayor's Court is that the defendant in the one case expresses his willingness to set off against the plaintiff's claim in the action *a debt* due to him from the plaintiff, while, in the other case, he makes a substantive claim which he seeks to recover as debt or as damages, and which, if established, entitles him to a verdict and costs on the counterclaim. If the amount claimed by the defendant be larger than that claimed by the plaintiff in the action, and if the defendant succeed in the whole of his claim, while the plaintiff succeeds in the original action, or if the defendant recover a larger amount than is recovered by the plaintiff, the defendant is entitled to a verdict for the balance after deducting the one amount from the other (*q*), and to judgment in the action. Where the balance is in plaintiff's favour, that balance is the only amount which can be said to have been "recovered" within the meaning of the provisions of the County Court Acts as to costs (*r*).

Demand of replication.

The defendant, having delivered his pleas, including the set-off or counterclaim (if any), should demand a

(*p*) R. S. C.; O. xix., r. 10.

(*q*) *Staples* v. *Young*, L. R. 2 Ex. D. 324; 25 W. R. 304; *Blake* v. *Appleyard*, 3 Ex. D. 195; 47 L. J. Ex. 407; 26 W. R. 592

(*r*) Wilson's Judicature Acts, 2nd ed., p. 194. But see *Potter* v. *Chambers* (L. J.; N. of Cases, Jan. 25, 1879), where Cockburn, C.J., and Pollock, B., *are reported to have* held that a plaintiff who established a claim to £114, but whose claim was cut down by a successful counterclaim to under £5, had "recovered" the larger amount within the meaning of s. 5 of the County Courts Act, 1867, and was therefore entitled to have his costs taxed.

Replication, which must, where the defendant has set up a counterclaim, include a defence to such claim, in addition to a joinder of issue on the other pleas, and must be delivered (unless the time is extended) in four days. In the case of cross claims, the action cannot be at issue until the plaintiff has replied to the counter claim and the defendant has (if called upon) rejoined to such reply, which he must do within two days.

A four-day demand.

Rejoinder if demanded.

Where the action has been at issue ten days, or where a sitting of the Court has been held at which the plaintiff might have entered it for trial, or where he has set it down and countermanded it, the defendant is at liberty to set the cause down for trial *per proviso*, and must give the plaintiff notice of his having so done.

When defendant may set cause down *per proviso*.

Four days' notice must be given to the plaintiff to bring in the record to the Registrar's office. If this be not brought in within two days of the day appointed for the trial, the defendant may make up and lodge a record, and will be entitled to the costs of so doing, provided due notice has been given to the plaintiff, but not otherwise.

Notice to bring in record.

When defendant may make up and lodge a record.

Costs.

The fact that the defendant has set down the cause *per proviso* neutralises any notice of countermand which may have been given by the plaintiff.

Effect of setting down cause *per proviso*.

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2. PROCEEDINGS AT THE TRIAL.

The practice and procedure in trials of issues in fact before a jury or before the Judge without a jury are, as far as possible, identical with those which obtain in

Proceedings at trial.

Westminster Hall (*s*). There is one peculiarity, however, which deserves the special attention of practitioners and litigants who are unfamiliar with the idiosyncrasies of the Mayor's Court. The Judge having taken his seat at the advertised time, the cause-list for the day is read over by the officer of the Court for the purpose and as a means of ascertaining, as early as may be, how many and which of the cases in the list are really to be tried. If, when the case (say) of *Brown* v. *Robinson* is called, the plaintiff's counsel answers, while there is no answer on the part of the defendant, it is at once presumed that the defendant does not intend to appear, and the jury are forthwith sworn to try, and then and there proceed to try, the case as undefended—a process which, provided the plaintiff's witnesses are ready, occupies a very few minutes. If, on the other hand, the mention of the case produces no response on the part of the plaintiff, while the defendant's counsel or solicitor announces that the case is defended, the same presumption is raised against the plaintiff, and the cause is then and there struck out of the list, in which it will be re-instated (unless the circumstances are exceptional) only on payment of costs of the day. The same process is continued until it has been ascertained which cases in the list are to be tried at all, and, of those, which are to be taken as undefended. This practice renders it absolutely necessary that every plaintiff, who does not wish his cause to be struck out

One point in which practice is peculiar to this Court.

Where plaintiff is ready and defendant is not.

Where defendant is ready and plaintiff is not.

All parties should appear at sitting of Court.

(*s*) See C. L. P. Act, 1854, ss. 18—31, which were extended and applied to this Court by the Order in Council. All but s. 18 were, by s. 103, directed to apply and extend to "every court of civil judicature in England and Ireland."

and himself to be fined in the costs of the day, should be in Court with his solicitor and witnesses at the time appointed for the sitting of the Court. The same remark applies to those defendants who have a *bonâ fide* defence and have not resisted the plaintiff's claim merely for the purpose of gaining time. And, lastly, it equally applies to those who are subpœnaed as witnesses on either side. Solicitors should take the necessary steps to secure the attendance of their witnesses at the sitting of the Court, and in no case is this precaution more advisable than in a case which there is reason to believe will, at the last moment, be undefended. A cause of this nature may be last in a list of ten or twelve causes, but, by reason of all the prior causes being announced as defended, it may be called on within five minutes after the Judge has taken his seat. Assuming that the plaintiff's counsel (or rather plaintiff's counsel's brief) is in Court, there is no reason why the case should not be disposed of in a few minutes, provided the witnesses are forthcoming. If, unhappily, they are not to be found when wanted, and if the consequences are disastrous to the plaintiff, it may be difficult to say on whom the blame ought to lie, but it is easy to see on whom it will, in fact, be laid.

And their witnesses.

Assuming the case to have been tried, and a nonsuit to have been ordered or a verdict for plaintiff or defendant found without any points of law having been raised or leave to move reserved, the nonsuit or verdict is entered on the record by the Registrar.

Verdict when found is entered on record.

The successful party is then entitled to have the record and enter the *postea*, as to which the practice is the same as in the Superior Courts before the Judicature Acts.

Postea.

Proceedings after trial.

3. PROCEEDINGS AFTER TRIAL.

When successful party where claim does not exceed £20 may sign judgment, and issue execution.

In any action where the amount sought to be recovered does not exceed £20, and where no leave to move has been given under section 10, the successful party may, on the day of the verdict or nonsuit, give notice of taxation for the next day, and on the next day may tax his costs and sign judgment (*t*); but he must not issue execution without the leave of the Court (obtainable on taxation) until the day after that on which the costs are taxed. Where the sum sought to be recovered in the action exceeds £20, the successful party must not issue execution until the third day after the verdict or nonsuit, the unsuccessful party having two days within which to give notice of appeal (*u*). He may, however, give notice to tax and proceed to judgment, and, having taxed his costs on the second day, may on the third day issue execution, if no notice of appeal has been given by his opponent, but he cannot (without leave) have execution until the day following that on which the costs are taxed. This is on the assumption that no order has been made for a stay of execution, which may always be applied for, either immediately on the verdict being found or nonsuit ordered or afterwards before the Registrar, and will always be granted where any good ground is shown, upon such terms as to costs, &c., as the Court may think fit to impose.

Where claim exceeds £20 unsuccessful party has two days for appealing.

Execution in three days, provided costs are taxed the day before.

Stay of execution, when to be applied for.

When granted.

(*t*) Judgment is signed by filing in the office of the Court a docket in the usual form, which is then entered on the record.

(*u*) M. C. L. P. Act, s. 8, *post*, p. 93.

The writ of execution, which, if not in strictly correct form, may be amended, must be indorsed by the solicitor who sues it out with his full address. It is not necessary that he should be the solicitor on the record, and no order for a change of solicitors is required. Where interest is required, there must be an indorsement stating the date from which it runs, nor must the rate be higher than four per cent., unless the parties have agreed that a higher rate shall be secured by the judgment. In every case of execution, the party entitled thereto may levy the poundage-fees and expenses of the same over and above the sum recovered (*v*). As to the proceedings necessary to revive judgments and other proceedings by and against persons not parties to the record, no more needs be said than that the practice is governed by sections 128—134 of the C. L. P. Act, 1852.

Writ of execution to be indorsed with address of solicitor.

Indorsement as to interest.

Poundage fees, &c., may be levied.

Proceedings to revive judgments, &c.

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4. PROCEEDINGS ON APPEAL.

Appeals.

The verdict of a jury will not be set aside nor will a new trial be ordered by the Mayor's Court, unless the Court is satisfied either that the jury were wrongly directed by the Judge, or that evidence material to some issue before the jury was improperly received or rejected; or that the verdict was against the evidence, or that, owing to surprise, mistake, or misconduct, there has been a palpable miscarriage of justice. The verdict of the Judge who tries a case without a jury by consent of the parties cannot be questioned on the

New Trial.

On what grounds granted in actions tried by a jury.

In actions tried by judge.

(*v*) C. L. P. Act, 1852; s. 123.

ground of being against the weight of evidence (*x*), and therefore, if challenged, must be challenged on the ground that the findings are wrong or that the conclusion he has drawn from the findings is wrong in law. No new trial can be granted on the ground that the Judge at the trial ruled that the stamp on any document was sufficient, or that any document tendered in evidence did not require a stamp (*y*). Where, however, a document formally tendered in evidence is rejected by the Judge on the ground of the absence or insufficiency of stamp, such ruling affords good ground for an application to set aside a non-suit or verdict, and for a new trial (*z*).

Where judge overrules objection to sufficiency of stamp or to admission of unstamped document, no ground for new trial; otherwise, where judge allows such objection and rejects document on that ground.

The practice as to applications for a new trial in the Mayor's Court is regulated more or less by the circumstances in which the trial takes place. As the rule is to fix one day in every sittings for motions and arguments, it may happen that an opportunity for moving for a new trial occurs within a day or two of the trial, in which case the motion may and should be made in Court for a rule to show cause. Where, however, this opportunity is not likely to occur, the party aggrieved by the verdict may take either of two alternative courses. He may either apply at once to the Judge for a stay of execution until he has had an opportunity of moving, or he may apply to the Registrar, who will always order a stay where reasonable grounds are shown. The applicant should be prepared with an affidavit in support of the latter application, if required.

Practice in M. C. on motions for new trial.

Where Court sits to hear motions on a day within the time for moving, the motion should be made in Court.

Stay of execution may be had of

(*x*) M. C. L. P. Act, 1857, s. 51; C. L. P. Act, 1854, s. 1.

(*y*) C. L. P. Act, 1854, s. 31.

(*z*) See *Sharples* v. *Pickard*, 2 H. & N. 57; *Glover* v. *Halkett*, *ibid*, 487.

Having got a stay of execution, he should either move at once *ex parte* for a rule *nisi*, or give two clear days' notice to the other side of his intention to move for a rule absolute in the first instance, stating in such notice the grounds on which he moves. In either case the motion should be made before the Judge who tried the cause. If a rule to show cause be granted, the grounds on which it was granted must be shortly stated in the rule (*a*). Where no leave to move is given at the trial, the decision of the Judge of the Mayor's Court in refusing, discharging, or making absolute a rule for a new trial is final and cannot be reviewed in any Court.

judge or registrar. Motion may be *ex parte* or on notice for a rule absolute.

Notice should state grounds. So also should rule to show cause.

Exercise of judge's discretion as to new trial is final.

If a new trial be ordered on the ground that the verdict was against the evidence, the costs of the first trial will abide the event, unless the Court otherwise orders (*b*). Where a rule, granted on any other ground, is silent as to costs, the costs of the first trial will not be allowed to the successful party, though he succeed on the second (*c*).

Where new trial ordered on ground of verdict against evidence costs of first trial abide event.

So far we have been dealing with appeals *in* the Mayor's Court. We now propose to deal with appeals *from* that Court, as to which not a little confusion appears to prevail. By the Mayor's Court Procedure Act two objects were attained, or supposed to be attained, in reference to appeals from that Court. The first of these objects—the facilitation of proceedings in error on matters arising in that Court—was effected

APPEALS FROM MAYOR'S COURT.

M. C. L, P. Act, 1857.

Object of section 4, to facili-

(*a*) C. L. P. Act, 1854, s. 33.
(*b*) C. L. P. Act, 1854, s. 44.
(*c*) Reg. Gen. Hil. T., 1853, r. 54. The rule now in the High Court is that the costs "follow the event," which has been held to mean the final result of all the proceedings incidental to the litigation. *Creen* v. *Wright*, L. R. 2 C. P. D. 354; 46 L. J. (C. P.) 427; 36 L. T. N. S. 355; 25 W. R. 502, followed in *Field* v. *G. N. R. Co.*, L. R. 3 Ex. D. 261; 47 L. J. Ex. 663.

tate proceedings in error.

by the provisions of the fourth section, which made the Court of Exchequer Chamber, in all cases of error arising on proceedings, the Court of Error for the purposes of that Act in lieu of the Court of St. Martin's-le-Grand (*d*). It was further provided by the same section that "all matters in error" should be proceeded with according to the rules to be framed for that purpose, which rules (by section 45) were to be signed by the Judge of the Mayor's Court, and were not to be of any force until allowed and confirmed by three of the Judges of the Superior Courts. No such rules have ever been framed for the purpose, possibly owing to the fact that the provisions of the sections of the C. L. P. Act, 1852, (ss. 146—167) relating to proceedings in error were by Order in Council directed to extend and apply to the Mayor's Court (*e*), and were deemed to render the framing of other rules of procedure superfluous. Without speculating on the cause, it is enough to say that, as no such rules as are contemplated by sections 4 and 45 of the Mayor's Court Act exist, it has been impossible to regulate the proceedings in error thereby.

Old procedure by writs of error, &c. abolished.

New procedure to be in accordance with rules to be framed, s. 45.

No rules have ever been framed.

Probable explanation.

Inconvenience arising from absence of rules.

Simpson v. *Henning*, (June, 1875.)

The inconvenience supposed to arise from the failure on the part of the Mayor's Court Judge to carry out the intention of the Legislature was remarked in the case of *Simpson* v. *Henning* (*f*), which was an appeal to the Exchequer Chamber from the judgment of the Mayor's Court on cross demurrers, that Court having allowed the demurrer to one of the defendant's pleas.

(*d*) M. C. L. P. Act, s. 4.
(*e*) See Appendix B.
(*f*) L. R. 10 Q. B. 406.

On the case coming into the Exchequer Chamber, plaintiff's counsel objected to the jurisdiction, and the case stood over for inquiry into the practice; and, the result being to show that, in the absence of rules, the practice was to bring the record into the Exchequer Chamber through the Court of Queen's Bench, the objection to jurisdiction was withdrawn and the judgment of the Mayor's Court was affirmed on the merits.

When the Exchequer Chamber was replaced by Her Majesty's Court of Appeal, the latter became Court of Error from Mayor's Court.

When the jurisdiction and powers of the Court of Exchequer Chamber were transferred by the Judicature Act (*g*) to the Court of Appeal, it became necessary to regard the fourth section of the Mayor's Court Procedure Act as amended by substituting "Her Majesty's Court of Appeal" for "the Exchequer Chamber." This appears too obvious to need more than a bare statement, but, nevertheless, it has been the subject of a decision in the High Court of Justice. In the case of *Le Blanch* v. *Reuter's Telegram Company* (*h*), error had arisen on the proceedings in the Mayor's Court, the Judge of that Court having allowed the defendant's demurrer to the plaintiff's Replication. Leave being reserved, the case was then taken, on notice of motion, before the Court of Appeal from Inferior Courts, sitting under section 45 of the Judicature Act. The learned Judges (Bramwell, B., and Mellor and Denman, JJ.) held that they had no jurisdiction, sitting as a Division of the High Court under section 45, to review the judgment as a Court of Error from the Mayor's Court, that jurisdiction having been transferred to the Court of Appeal.

Le Blanch v. *Reuter's Telegram Co., Limited*, (April, 1876.)

Divisional Court held they had no jurisdiction, not being *The* Court of Appeal.

(*g*) Section 18 of Act of 1873. (*h*) L. R. 1 Ex. D. 408.

C. L. P. Act, 1854. Section 32 is applied by Order in Council to M. C.

The Order in Council before mentioned having extended and applied to the Mayor's Court the provisions contained in section 32 of the C. L. P. Act, 1854, it is necessary, before leaving the subject of error, to examine that section. It provides that error may be brought on a judgment on a special case, as on a judgment on a special verdict, *unless the parties agree to the contrary*, and the Court of Error shall either affirm the judgment or give the same judgment as ought to have been given in the Mayor's Court, the Court of Appeal being required to draw any inferences of fact from the facts stated in such special case which the Judge of the Mayor's Court ought to have drawn.

Error may be brought on a judgment in a special case.

Procedure regulating appeals under section 4 to Court of Appeal.

There being no doubt as to the tribunal to which an appeal lies under section 4 of the Mayor's Court Act, the further question arises, by what procedure are such appeals to be regulated. The Exchequer Chamber has gone, and with it have gone "Error," bills of exceptions, and such other procedure as had survived the Common Law Procedure Acts. Although the Court of Appeal has inherited the jurisdiction and powers of the Court of Exchequer Chamber, it has not preserved the practice or procedure of that Court. All appeals to Her Majesty's Court of Appeal are by way of re-hearing, and are initiated by giving notice of motion simply, without further formality. It is clear, then, that as the Court of Appeal is master of its own procedure, the only way in which an appeal under the fourth section can be brought from the Mayor's Court to the Court of Appeal is by motion after due notice given. Practically, the appeals under this section are now limited to

Like all other appeals to that Court they must be by motion.

Appeals from judgments allowing or overruling demurrers.

Within what time to be brought.

appeals from judgments of the Mayor's Court allowing or overruling demurrers. As a judgment allowing or overruling a demurrer is not an interlocutory order as regards the time for appealing (*i*), the party aggrieved has a year in which to appeal, and, if he likes to take advantage of this privilege, may postpone his application to the Court of Appeal until his opponent has proceeded to trial, verdict, judgment, and execution. Inasmuch as no judgment can be given by the Court of Appeal on a demurrer without having the record before it, it is clear that the record must be taken up from the Mayor's Court by the appellant.

Practice in other appeals. M. C. L. P. Act, 1857, sections 8 & 9.

Section 10 commonly resorted to.

Appeal under 8th and 9th sections.

Where claim is over £20. Must be by case.

Notice of, must be given within two days.

The practice and procedure in appeals from the Mayor's Court, other than proceedings in error, are regulated by the eighth, ninth, and tenth sections of the Mayor's Court Procedure Act. In practice, the mode of appeal provided for by sections 8 and 9 has been found too cumbrous to be of much service, and section 10 is the one commonly resorted to by those who are dissatisfied with any determination or direction of the Mayor's Court in point of law. It will suffice, therefore, to remark as to the appeal under sections 8 and 9 that it can only be resorted to in actions for over £20; that it must be in the form of a case, which (if the parties do not agree) must be settled and signed by the Judge and transmitted by the Registrar to the *Crown Office* Master; that notice of appeal must be given to "the other party" within two days after such determination or direction; that security for costs must be given, if the Judge shall so direct, to such amount and within

(*i*) *Trowell* v. *Shenton*, L. R. 8 Ch. D. 321, *per* Jessel, M. R.

Security for costs of appeal.

Order of Appeal Court final.

such time as required by the Registrar; that the Divisional Court of Appeal may order a new trial or judgment to be entered with or without any order as to costs of appeal, *all such orders to be final* (*k*).

Section 10. Proceedings under, not called appeals.

In section 10 the word "appeal" is not to be found, nor is anything said about the amount sought to be recovered in the action (*l*). The first condition imposed by the section on the party aggrieved by the result of a trial is that leave to move in a Superior Court must have been granted by the Judge "*upon the trial.*" Where such leave is refused, or is not granted "upon the trial," the Superior Court has no jurisdiction to hear the motion. It must, therefore, be not only asked for but granted "upon the trial," and these words have been decided to mean "within a reasonable time of the trial" (*m*). Where the plaintiff being nonsuited asked for leave to move, and the leave was refused at the time, but the Judge, after reconsideration, decided to grant leave and did so accordingly on the *fourth* day after the trial, it was held by Bovill, C. J, and Keating and Grove, JJ. (Brett, J., dissenting), that the leave had not been granted "*upon the trial.*" Whatever may be the value of that case as an authority at the present day, it is obvious that the proper time to ask for "leave to move" is at the close of the trial in which the Judge has directed or declined to direct a nonsuit or a verdict,

Neither party can move without leave which must be granted "upon the trial."

What those words mean.

Folkard v. *Metropolitan Railway Co.* (June 1873).

Judgment of C. P.

When leave to move should be applied for.

(*k*) M. C. L P. Act, ss. 8 and 9. See Appellate Jurisdiction Act, 1876, s. 20, Appendix (C). No appeal lies from High Court to Court of Appeal *without leave* under section 45 of the Act of 1873, which is not repealed by s. 20 of the Act of 1876, the latter applying only to cases in which no statutory provision has been made for appealing by leave. *Crush* v. *Turner*, L. R. 3 Ex. D. 303. (July, 1878.)

(*l*) The words are "the trial of *any issue*."

(*m*) *Folkard* v. *Metropolitan Ry. Co.*, L. R. 8 C. P. 470. According to Bovill, C. J., *two* days might have been a reasonable time.

or has allowed or overruled an objection to the reception of evidence, as the case may be. It is the duty of the Judge to administer the law to the best of his ability, but, as he may be wrong, he never refuses the desired leave (which is substantially, though not technically, a leave to appeal from his own ruling) in any case that is fairly arguable. In nine cases out of ten the leave is granted (if at all) when it is applied for, so that, if applied for "upon the trial," it is granted "upon the trial." Next, it is to be observed that the only applications which can be made under this section are applications in the High Court to set aside the verdict or nonsuit, as the case may be, and enter a verdict the other way, or to have a new trial. The time for moving is "such period of time after the trial as motions of the like kind shall from time to time be permitted to be made" in the Superior Court in which the party has been given leave to move. Leave may be given to move in any of "the Superior Courts," which, according to the interpretation section (54) of the Act, means in any of "Her Majesty's Superior Courts of Common Law at Westminster" or, in other words, the Courts of Queen's Bench, Common Pleas, and Exchequer. Those Courts having ceased to exist as independent Superior Courts, but still existing as Divisions of the High Court of Justice, it would seem to follow that the words "any of the Superior Courts" must now be read as if they were "any of the three *Common Law Divisions* of the High Court of Justice." The time, then, for moving under this section is the same as the time allowed by the Rules of the Supreme Court, namely, within four days after the trial.

Is always granted in an arguable case.

Nature of application under section 10.

Within what time it must be made.

Where it may be made.

M. C. L. P. Act, s. 54.

Must be in one of the three *Common Law Divisions*.

Ex parte motion.

The motion is *ex parte* for a rule to show cause, and the Division of the High Court to which it is made is "authorised and empowered" by section 10 to grant or refuse such rule, and, when granted, to hear and determine the merits thereof, and to make such orders thereupon (including costs) as it shall think proper (*n*). The rule, when granted, operates as a stay of proceedings until the determination thereof.

Superior Court is given jurisdiction to grant rule and hear and determine merits.

Rule is a stay of proceedings.

Practice where new trial is ordered.

Where rule *nisi* is discharged.

Where a verdict or nonsuit is ordered to be entered.

Where the result of the hearing is an order that a new trial be had, an office copy of the order or rule absolute is to be delivered to the Registrar, and thereupon the action proceeds to trial *de novo* according to the practice of the Mayor's Court. Where the result is that the rule is ordered to be discharged, the party in whose favour such order is made is at liberty, on delivering an office copy thereof to the Registrar, to proceed in his action as if no such rule *nisi* had been obtained. Where the High Court sets aside the verdict or nonsuit, as the case may be, and orders the verdict to be entered for the other party, judgment is to be entered accordingly [by the Registrar on production of an office copy of the order].

No appeal under section 10 beyond the Superior Court to which application is made.

So far we have been dealing with the procedure and practice in appeals by leave of the Judge, under the tenth section of the Mayor's Court Act. That section clearly intends the determination of the appeal by the Superior Court to be final and conclusive. But by the Order in Council of Nov. 17, 1863, the 34th section of the C. L. P. Act, 1854, was (with many others) extended

(*n*) The costs of the rule should invariably be asked for by the rule, as otherwise they cannot be granted, for the reason given by the Common Pleas reporter in the footnote to *Phillips* v. *Bridge*, L. R. 9 C. P. 324 (April, 1874).

and applied to the Mayor's Court. By that section it was enacted that, "in all cases of rules to enter a verdict or nonsuit upon a point reserved at the trial, if the rule to show cause be refused or granted and then discharged or made absolute, *the party decided against may appeal.*" Then by section 41 (also applied to the Mayor's Court) it is enacted "that the Court of Appeal (that is, the Exchequer Chamber or the House of Lords,) shall give such judgment as ought to have been given in the Court below; and all such further proceedings may be taken thereupon as if the judgment had been given in the Court in which the record had originated."

Effect of section 34 of C. L. P. Act, 1854, extended by Order in Council to M. C.

Section 41.

It must be observed that section 34 is confined to "rules to enter a verdict or nonsuit upon a point reserved," &c., and does not deal with motions for a new trial; the latter are provided for by section 35, which is not extended or applied to the Mayor's Court. The result is that, within one month after the publication of the said Order in Council in the "Gazette," a party moving under section 10 of the M. C. L. P. Act, 1857, in one of the Superior Courts at Westminster for "a rule to enter a verdict or a nonsuit upon a point reserved at the trial" was at liberty to appeal to the Exchequer Chamber and thence to the House of Lords from any decision against him, whether that decision took the form of a refusal to grant a rule *nisi*, or of an order discharging his rule after cause shown. The same liberty to appeal was also extended to the party called upon to show cause, if he should become a "party decided against." On the other hand, the provisions of section 10 of the M. C. L. P.

Section 34 does not deal with motions for a new trial.

Section 35 does, but does not apply to M. C.

Act, 1857, as to the effect of an order discharging or making absolute a rule for a new trial by the Superior Court remained in force, and the determination of such Court, so far as new trials were concerned, was still to be final and without appeal. Such was the law as to appeals from the Mayor's Court when the Judicature Acts were passed. By the 45th section of the Act of 1873 it was provided that all appeals, whether from sessions, from a County Court, or from *any other Inferior Court*, which might before that Act have been brought to any Court or Judge whose jurisdiction was by that Act transferred to the High Court of Justice, might be heard and determined by Divisional Courts of the said High Court, whose determination of an appeal should be final, unless special leave to appeal from the same to the Court of Appeal should be given by the Divisional Court by which the appeal was heard. The first question is whether the Mayor's Court, which is not mentioned by name in this section, is included in the words "any other Inferior Court," &c.

Judicature Act, 1873. Section 45.

Does it touch the M. C.?

That question has been the subject of a decision by the Court of Appeal in the case of *Appleford* v. *Judkins* (*o*), of which the following is a summary:—

Appleford v. *Judkins* (June 1878).

This was an action of ejectment, in which the Judge of the Mayor's Court had directed a verdict for the plaintiff, but stayed execution and gave the defendant leave to move in the Superior Court under the 10th section of the Mayor's Court Act. The defendant moved, pursuant to the leave given, in the Common Pleas Division, which granted a rule to show cause why a nonsuit

Verdict for plaintiff.

Leave to move under section 10 of M. C. L. P. Act.

(*o*) L. R. 3 C. P. D. 489; 47 L. J. 615; 38 L. T. 801; 26 W. R. 734.

should not be entered. The rule, having been granted, was, in accordance with the practice under Order 58, R. 19, put into the list of Appeals from Inferior Courts, and, as such, came on before a Divisional Court sitting under section 45 of the Judicature Act, 1873, when, after cause shown, it was discharged with costs. Thereupon the plaintiff became entitled (*p*), on delivering an office copy of the order to the Registrar of the Mayor's Court, "to proceed in his action as if no such rule *nisi* had been obtained," and to have judgment entered for him in accordance with the verdict. No leave to appeal was applied for at the time on behalf of the defendant, but some days afterwards the "special leave" required by section 45 of the Judicature Act was applied for by way of motion, and was refused. The defendant, however, obtained an order to stay the proceedings in the Mayor's Court pending the prosecution of his appeal, assuming that the Court of Appeal had jurisdiction to entertain it.

Rule granted by C. P. D. was argued as an Inferior Court Appeal.

Rule discharged.

Leave to appeal asked for, but refused.

Stay of proceedings in Mayor's Court.

When the appeal came on before Bramwell, Baggallay, and Thesiger, L.JJ., the preliminary objection— that, in the absence of "special leave," no appeal lay— was taken for the plaintiff, and, after argument, was sustained by the Court. The defendant's counsel contended that, although generically the Mayor's Court was an Inferior Court, it was not one of the "other Inferior Courts" referred to in the 45th section of the Judicature Act, 1873. By the 46th section of the Mayor's Court Act the Queen was empowered to direct by an Order in Council that the provisions of any Act

Defendant appealed.

Objection to jurisdiction of C. A., sustained by that Court.

Defendant's contention.

(*p*) M. C. L. P. Act, s. 10.

passed to amend the law should extend and apply to the Mayor's Court, and by an Order in Council, dated Nov. 17, 1863, certain provisions contained in the Common Law Procedure Act, 1854 (of which section 34 was one), were so extended and applied. Under the 34th section, the defendant might, before the Judicature Acts, have had the decision of the Common Pleas reviewed in the Exchequer Chamber without "special leave." If that was so, and if by the Judicature Act the jurisdiction and powers of the Exchequer Chamber were transferred to the Court of Appeal, it followed that, under the same section, the defendant was entitled to appeal to the last mentioned Court from the order of the Common Pleas Division. The Court, however, did not follow the defendant's argument, but held (not without some apparent hesitation on the part of Baggallay, L.J.) that the appeal did not lie. The process of reasoning by which that conclusion was arrived at seems to have been the following:—In substance, though not in form, the application to the Common Pleas Division was an appeal. The Mayor's Court is undoubtedly an Inferior Court; the appeal therefore was an appeal from an Inferior Court. Was it one of the appeals from an Inferior Court which might, before the passing of the Judicature Act, have been brought to a Court whose jurisdiction was by that Act transferred to the High Court of Justice? Clearly it was, for, before that Act, it would have been brought to one of the three Superior Courts of Common Law at Westminster, whose jurisdiction was by that Act transferred to the High Court. That being so, it was an appeal which might be (and which in fact had been)

Judgment fo C. A.

heard and determined by a Divisional Court of the said High Court, sitting under section 45 of the Act. The "special leave" to appeal from their "determination" to the Court of Appeal which is required by that section not having been given, it followed that such determination was final, and the Court of Appeal had no jurisdiction to hear the appeal.

That case having authoritatively settled that the practice of the High Court as to appeals from Inferior Courts is to govern appeals from the Mayor's Court under section 10 of the M. C. L. P. Act, 1857, no more needs be said on the subject than that the practice is contained in the rules and orders made from time to time by the Supreme Court of Judicature. What was intended by the provision in section 15 of the Judicature Act, 1875, for the application of the enactments relating to appeals from County Courts to any other Inferior Court of record does not seem to have ever been explained. If an Order in Council was necessary before those "enactments" could apply to the Mayor's Court, it is clear that, as no such order in Council has been published, they do not, as yet, apply to this Court.

Judicature Act, 1875, s. 15.

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5. PROCEEDINGS BY SPECIAL CASE.

Special case.

The parties "in any action" are at liberty, *after issue joined*, by consent *and* by order of the Court, to state the facts in the form of a special case for the opinion either of the Mayor's Court or of any one of the Superior

M. C. L. P. Act, 1857. Section 5. Power to state a

case, after issue joined, by consent of parties and by order of Court.

Courts (by which, as we have seen (*q*), is now to be understood one of the three Common Law Divisions of the High Court), and to agree that judgment shall be entered thereon (that is, upon the opinion of the Mayor's Court or of the Superior Court), for plaintiff or defendant as the Court may think fit (*r*). In case the parties consent and obtain an order to that effect from the Registrar, the latter is to transmit such special case, under the seal of the Court, to the Rule Department of the Master's office of the Court (Division), in which the case is to be argued. Thereupon all such proceedings are to be taken and rules and regulations observed in the Superior Court (Division) as are usual with reference to cases stated for the opinion of such Superior Court (Division) in actions therein pending. In other words, as soon as the case has left the hands of the Mayor's Court Registrar and has gone into the hands of the Common Law Division Master, the practice and procedure of the Division must be observed without any regard to the accident that the action is in the Mayor's Court. It is to be observed that these sections of the M. C. L. P. Act make no provision for the statement of a case without pleadings, but assume that the action must have gone as far as joinder of issue. Nor is the consent of the parties enough; having agreed *inter se*, they must obtain the order of the Court. Conversely the Mayor's Court has no power under this section, without the consent of both parties, to order a case to be stated either for the opinion of itself or for that of the High Court.

Judgment may be entered upon opinion of Court.

Section 6. Case when stated to be sent to Master's office of High Court Division.

It then becomes like any other High Court case, and is governed by High Court practice.

Remarks on provisions of M. C. L. P. Act.

(*q*) *Ante*, p. 95.

(*r*) See 3 & 4 Will. IV. c. 42, s. 25.

By the Order in Council of Nov. 17, 1863, the provisions of the C. L. P. Act, 1852, as to questions raised by consent *without pleadings* are extended and applied to the Mayor's Court. Their effect may be shortly stated as follows. The parties to an action (*s*) are enabled to dispense with pleadings altogether, and to raise disputed questions of fact, in the decision of which they have a *bonâ fide* interest (*t*), for the decision of a jury by means of an issue, and disputed questions of law for the opinion of a Court by means of a Special Case. Further, they are permitted to agree beforehand in writing as to the amount payable to the plaintiff (where he seeks to recover money), and as to the costs, and that judgment shall be entered and execution issued accordingly. Where no agreement is come to as to the costs, they are to follow the event.

C. L. P. Act, 1852, sections 42—48, applied to M. C. Effect of those provisions.

Section 42.

Section 46.

Sections 43, 44, and 47.

Section 18.

As the practice and procedure of the Common Law Division to which a case is sent from the Mayor's Court are to be followed, it would seem that a Special Case stated under the 5th section must be argued before a single Judge, unless all parties agree that it shall be heard before a Divisional Court (*u*). When the case has been heard and determined, the successful party should obtain an office copy of the order of the Judge or of the Divisional Court, and produce the same to the Registrar, who thereupon enters judgment in conformity with such order.

M. C. L. P. Act, section 7.

(*s*) "Action" here means *personal* action. See interpretation of terms in s. 227 of C. L. P. Act 1852.

(*t*) Unless he is satisfied of this, the Judge is not to give leave.

(*u*) See the Appellate Jurisdiction Act, 1876, s. 17, and R. S. C. Order lvii. (a), Rule 1. Wilson's Judicature Acts, 2nd ed. p. 238.

Removal of pending actions, &c.

6. REMOVAL OF PENDING ACTIONS AND CAUSES INTO THE HIGH COURT OF JUSTICE.

M. C. L. P. Act, section 16.

Power of defendant in action for not more than £50, to remove same into High Court.

By means of a writ of *certiorari* ordered by a Judge.

Practice after *certiorari* ordered.

It operates as a stay.

Section 17.

When writ must be lodged.

To whom directed.

If a defendant in any action pending in the Mayor's Court, in which the claim does not exceed £50, wishes to remove such action into one of the Common Law Divisons of the High Court before judgment, he must proceed in one of two ways. He may apply by summons at Chambers to a Judge of the High Court for an order directing a writ of *certiorari* removing the action into one of the said Divisions of the High Court. The order (when made) is filed at the Writ Office on sealing the writ, and a copy thereof is left, together with the writ, at the Registrar's office, after which any step taken in the action in the Mayor's Court will be in contempt of the Court from which the writ was issued. The writ must be lodged "with the proper officer" of the Mayor's Court (*x*) within one month after service of the plaint, or, in any case, before the action is entered for trial according to the Mayor's Court practice. It is directed to the Lord Mayor and Aldermen as the judges before whom the Court is in law supposed to be held, and must be made returnable immediately (*y*). The practice is for the Registrar to give the plaintiff notice of the writ having been lodged, and to prepare the return thereto, which the defendant must apply for and file. In the absence of the order above referred to, the defendant must, before taking out the writ, be bound, with two sufficient

Notice given to plaintiff by Registrar, who prepares return.

Defendant not having

(*x*) The Registrar.

(*y*) M. C. L. P. Act, s. 52.

sureties such as the Mayor's Court shall allow (*z*), by recognizance to be acknowledged in the Mayor's Court in a sum sufficient for the payment of the plaintiff's claim and costs, in the event of a judgment passing for the plaintiff in the Superior Court or of the action being remitted to the Mayor's Court by writ of *procedendo*. The defendant must give the plaintiff *two days' notice* of his intention to attend at the Registrar's office, at a time named (*a*), with his sureties. Should the plaintiff attend and object to the sufficiency of the proposed sureties, they must justify before the Registrar, and, if allowed, must, together with the defendant, enter into the necessary recognizance, which must in any case be enough to cover the plaintiff's claim and all reasonable costs. Should the plaintiff not attend at, or within half-an-hour of, the time mentioned in the notice, the Registrar will, on an affidavit of due service of notice, take the required recognizance, and make a return to the writ accordingly, which return is then filed.

a Judge's order must give security for claim and costs. Section 16.

Practice as to security.

After the writ is filed the defendant should enter an appearance in the Division of the High Court to which the action is removed, and, if he do not so appear, the plaintiff may compel him to do so by obtaining a conditional order for a *procedendo* unless the defendant appears within four days of the service thereof. Where one of several defendants in an action has obtained a *certiorari*, an appearance must be entered for them all, or a *procedendo* may be obtained. The writ of *certiorari* is liable to be quashed at any time before the return thereto

Defendant should enter an appearance in High Court.

Where several defendants, appearance must be entered for all.

(*z*) They must be householders.

(*a*) Which should be between the hours of 12 and 2. See *post*, p. 127.

has been filed, but after that has been done, a *supersedeas* is the remedy (*b*).

M. C. L. P. Act. Section 19. Applies to all actions pending where defendant has pleaded.

No action pending in the Mayor's Court (whatever be the amount claimed) is removable therefrom into any of the Common Law Divisions of the High Court after the defendant has pleaded and before judgment without the leave of a Judge of one of the said Divisions (*c*). Such leave is not to be granted except in cases which appear to the Judge "fit to be tried in a Superior Court," and, where granted, is to be on such terms as to costs, or security for claim and costs, as the Judge may think fit to impose.

Section 20. Applies to suits on equity side.

The provisions of the Act as to the removal of suits commenced on the Equity side of the Mayor's Court, by a special order of a Chancery Judge, have been already noticed under the head of "Jurisdiction" (*d*).

Section 52. Three modes of removal prescribed.

Except in one of the three modes prescribed by the Mayor's Court Procedure Act, no "cause" is removable under that Act from the Mayor's Court before judgment, nor can a cause after being part heard and adjourned be removed by any proceeding under that Act before final judgment.

Plaintiff not obliged to proceed in High Court.

When an action has been removed into the High Court in one of the above-mentioned modes, the plaintiff may proceed or not, as he pleases, and the defendant cannot sign judgment of *non pros.* against him for not going on (*e*). If he do so proceed, it must be entirely *de novo* with a Statement of Claim, which is not confined to the form of action in the Mayor's Court, but must be founded on the same cause or causes of action,

If he proceeds he must deliver

(*b*) See 2 Chitty's Archbold, 1329, 11th ed.

(*c*) Which must be applied for by a summons at Chambers.

(*d*) *Ante*, pp. 62, 63.

(*e*) *Clerk* v. *Mayor &c., of Berwick*, 4 B. & C. 649.

and must not claim a larger amount than was claimed in the action in the Mayor's Court. The costs incurred in the action in the Mayor's Court before removal into the High Court will be costs in the cause (*f*). Statement of Claim.

The provisions of the M. C. L. P. Act for the removal of pending actions and causes into a Superior Court have been rendered to a great extent inoperative by the provisions of the Judicature Acts as to the jurisdiction of Inferior Courts, to which reference has already been made for another purpose (*g*). The proviso in the 90th section of the Act of 1873 only applies to such a case as has been contemplated in the earlier part of that section, a case, namely, in which the Mayor's Court, owing to its limited jurisdiction, is unable to do complete justice between the parties. In such case it shall be lawful for any Judge of the High Court, on the application of any party to the proceeding (*h*), to order a transfer of the whole proceeding to the High Court. Where the transfer is ordered, the Registrar transmits the record to the Master's office of the Division to which the "proceeding" is transferred, and the same is thenceforward continued and prosecuted in the High Court. It should be observed that the proceedings are to be *continued* in the High Court, and not re-commenced as in the case of removals by *certiorari* under the M. C. L. P. Act, so that

Effect of Judicature Acts on foregoing provisions as to removals.

Proviso in section 90.

Where proceedings transferred, record transmitted to High Court.

(*f*) R. G. Hil. Term, 1853, R. 117; provided the M. C. had jurisdiction in the cause. An action removed from the M. C. by *certiorari* into the High Court at the instance of the defendant is an "action in a Superior Court" within the meaning of section 5 of the County Courts Act, 1867. It follows that, if in such action the plaintiff recovers no more than £20 (in contract) or £10 (in tort), he will be entitled to no costs of suit without a rule or order allowing them. A certificate he cannot have. *Pellas* v. *Breslauer* (May 1871), L. R. 6 Q. B. 438; 40 L. J. Q. B. 161; 24 L. T. N. S. 762; 19 W. R. 779.

(*g*) *Ante*, p. 66.

(*h*) *Ibid.*, note (i).

the old rule that there can be no continuance from an Inferior to a Superior Court (*i*) must be deemed to have been repealed (together with several other old rules) by recent legislation.

Removal of judgments, &c.

7. REMOVAL OF JUDGMENTS AND ORDERS FROM THE MAYOR'S COURT INTO THE HIGH COURT OF JUSTICE.

M. C. L. P. Act, 1857, s. 48.

In dealing with the question of jurisdiction, the provisions of section 48 of the M. C. L. P. Act have been briefly given (*k*). That section provides for the removal into the High Court of a judgment obtained in, and of a rule or order made by, the Mayor's Court, by having the writ of execution on such judgment or such rule or order sealed by the proper officer of the High Court on a *præcipe* being lodged with him, together with an affidavit verifying the judgment or order and the fact that the same remains unreversed and unsatisfied. Immediately thereupon such writ and such judgment, rule, or order becomes and is of the same force, charge and effect, as if recovered in or made by the High Court. That, however, rests on the assumption that the judgment or order was obtained or made in a matter over which the Mayor's Court had jurisdiction. Where in fact it is obtained or made in a matter over which that Court has no jurisdiction, the High Court will not enforce it, but on the contrary will set it aside on application, and will prohibit the Mayor's Court from further proceeding to enforce it there. In support of this proposition it is enough to cite the authority of *Bridge* v.

Bridge v.

(*i*) Gilbert's Law of Execution, p. 144.

(*k*) *Ante*, pp. 60, 61.

Branch, a case which came before the Common Pleas Division in May 1876, and which has been before referred to for another purpose (*l*). It was contended that defect of jurisdiction in the Inferior Court, and mere irregularity in the mode of obtaining a judgment in the Inferior Court, were practically the same thing so far as regarded the competence of the Superior Court to set it aside, the judgment being removed into the High Court merely for the purpose of being enforced. It was held by Lord Coleridge, C.J., and Brett and Archibald, JJ., that, if section 48 of the M. C. L. P. Act, 1857, was to be construed in accordance with common sense and reason, the High Court was not precluded from dealing with a judgment improperly obtained in the Mayor's Court in the way in which it would deal with any other judgment obtained in the High Court. When it is shown that the judgment removed into the High Court for the purpose of being enforced is the result of a proceeding in a Court which has no jurisdiction over the subject-matter, that is a perfectly good ground for setting the judgment aside. It is otherwise as to a mere irregularity. Where the only objection to the judgment being enforced in the High Court is that there was some irregularity in the proceedings in the Mayor's Court, the High Court has no jurisdiction to inquire into the merits or the regularity of those proceedings (*m*).

Branch (May 1876).

Contention of plaintiff.

Judgment of C. P. D.

Where objection is to irregularity in M. C. proceedings, High Court has no jurisdiction to go behind judgment.

(*l*) *Ante*, pp. 19, 20.

(*m*) *Williams* v. *Bolland*, L. R. 1 C. P. D. 227; 34 L. T. N. S. 904; 24 W. R. 644. Nor is it any objection that execution could have been issued out of the M. C. with as full effect as out of the Superior Court, and that the only object of removing the judgment was to obtain the increased costs. The removal is a matter of right. *Haywood* v. *Saint*, (June, 1875), 32 L. T. N. S. 566.

Inter-pleader.

8. PROCEEDINGS IN INTERPLEADER.

1. For relief of persons generally under M. C. L. P. Act, 1857, section 32.

Application by a defendant harassed by conflicting claims.

Any defendant *in any action* in the Mayor's Court may apply, after declaration and before plea, by affidavit or otherwise, showing that he does not claim any interest in the subject-matter of the suit; but that the right thereto is claimed by, or supposed to belong to, a third party who has sued or is expected to sue for the same, and that the defendant does not in any manner collude with such third party, but is ready to bring into Court, pay, or dispose of the subject-matter of the action as the Court may order or direct (*n*). On such application the Registrar may issue a summons calling on such third party to appear in Court, and to state the nature and particulars of his claim, and to maintain or relinquish the same. Such summons may be served on such third party in any part of England or Wales (*o*). A copy thereof must be served on the plaintiff or his solicitor. On the hearing of the summons both the third party and the plaintiff will have a right to be heard, and in the meantime the proceedings in the action will be stayed (*p*). If the third party do not appear on the summons, being duly served therewith, or if, after appearing, he neglect or refuse to comply with any rule or order made by the Court, he and all persons claiming by from or under him may be declared

Summons to third party.

May be served outside the local jurisdiction.

Proceedings in action stayed. M. C. L. P. Act, s. 34.

(*n*) The affidavit in support of the application should be intituled in the action, and should allege all that is required to bring the case within the statute.

(*o*) See *ante*, p. 60.

(*p*) If more actions than one are pending, the application should be made in each. *Allen* v. *Gilby*, 3 Dowl. 143.

to be for ever barred from prosecuting his claim against the defendant in the action or his representatives. In such case, when the third party's claim against the defendant is barred (his claim against the plaintiff being saved), the Court may make such order between plaintiff and defendant as to costs and other matters as may appear just and reasonable. Where the third party appears to maintain his claim, the Court, after hearing his allegations as well as those of the plaintiff, may make one of two orders. It may order him to make himself defendant in the same or some other action, or to proceed to trial on one or more issue or issues, directing which shall be plaintiff and which defendant. On the other hand, it may, with the consent of the plaintiff and the third party, summarily dispose of and determine the merits of their claims, and make such orders therein as to costs and all other matters as may appear to be just and reasonable. In whatever mode the question is decided—whether it be by judgment in an action or issue directed by the Court, or by an order made on the summons—the decision is to be final and conclusive against the parties and all persons claiming by from or under them. Such are the provisions of the M. C. L. P. Act, 1857, which, *mutatis mutandis*, are taken in terms from the Interpleader Act of 1831 (sections 1–3).

Third party's claim how barred.

Where claimant appears, how Court may deal with question.

Where both claimants consent, Court may deal with claims summarily.

Decision, however arrived at, to be final. M. C. L. P. Act, s. 33.

Provisions borrowed from ss. 1—3 of 1 & 2 Will. IV. c. 58.

With these provisions were afterwards incorporated (by Order in Council) the provisions contained in sections 12–18 of the C. L. P. Act, 1860, the effect of which may be summarized as follows. Interpleader may be granted even where the titles of the claimants have not a

C. L. P. Act, 1860, ss. 12—18 extended and applied to M. C.

Section 12.

common origin, but are adverse to and independent of one another. The Court is empowered summarily to dispose of the rival claims at the request of either party (instead of, as under the M. C. L. P. Act, by the consent of both parties), on the ground of the smallness of the amount in dispute. Where the facts are not in dispute and the question is one of law, the Judge has a discretion to decide the question in a summary manner without consent of either party, and, if he thinks it desirable, to order that a special case be stated for the opinion of the Court, the proceedings on which are governed by sections 46–48 of C. L. P. Act, 1852, and section 32 of the C. L. P. Act, 1854. All rules, orders, &c., in interpleader proceedings under the Act of 1860 may be entered of record and made evidence to secure the payment of costs directed by any such rule or order, and, when so entered, shall have the force and effect of a judgment in a Superior Court.

Section 14

Section 15.

Section 16.

Section 18.

2. For relief of the Serjeant-at-Mace in execution of process against goods under M. C. L. P. Act, 1857, section 35. Registrar may issue summons.

The provisions of the M. C. L. P. Act, 1857, intended to protect the Serjeant-at-Mace in the execution of the process of the Mayor's Court, are borrowed, *mutatis mutandis*, from the 6th section of the Interpleader Act. The Registrar is empowered by section 35 to issue a summons calling before the Court both the party issuing such process and the party making a claim to or in respect of any goods or chattels taken or intended to be taken in execution, or to or in respect of the proceeds or value thereof. Thereupon any action brought in any Court of Record in respect of such claim shall be stayed, on pain of an order against the party bringing such action to pay the costs of all proceedings had on such

Which operates as a stay of any action in respect of such claim.

action after the issue of such summons (*q*). The Mayor's Court is thereupon to exercise, for the adjustment of such claims and for the relief and protection of the Serjeant-at-Mace or his officers, the powers and authorities conferred by the previous sections, and to decide whatever may appear in the circumstances to be just, the costs of all such proceedings being in the discretion of the Court.

Power of M. C. to decide between claimants.

By the application to the Mayor's Court of the 13th section of the C. L. P. Act, 1860, an entirely new and very useful power was conferred on that Court. It provides that, when goods, &c., have been seized by the Serjeant-at-Mace under process of the Mayor's Court, and the title to such goods, &c., is claimed by a third person under a bill of sale or otherwise *by way of security for a debt*, the Court may order a sale of the whole or part thereof, and direct the application of the proceeds in such manner and on such terms as may seem just (*r*).

C. L. P. Act, 1860. Section 13.

M. C. may direct sale of goods seized in execution.

An interpleader issue is within the principle and therefore within the provisions of the 51st section of the C. L. P. Act, 1854, relating to the delivery, by one party in a cause, of interrogatories in writing for the examination of the opposite party (*s*). It has also been held that, under section 34 of the same Act, an appea lay to the Exchequer Chamber to review a decision on

Either party to an issue may interrogate the other.

(*q*) Which order may be made by any Judge of the Court in which such action is brought upon proof of the summons and of the execution.

(*r*) This provision was in conformity with the recommendation of the Common Law Commissioners in their third Report. See notes to Day's C. L. P. Acts, 4th ed. p. 361.

(*s*) *White* v. *Watts*, 31 L. J. C. P. 381.

a rule obtained after the trial of an interpleader issue (*t*), and that an appeal lies to the Court of Appeal from a judgment at or after trial in interpleader (*u*).

Proceedings on Judgment Summonses.

9. PROCEEDINGS ON JUDGMENT SUMMONSES.

Sections 36—40, M. C. L. P. Act, 1857, virtually repealed by 32 & 33 Vict. c. 62.

The sections of the M. C. L. P. Act, 1857, relating to the procedure on judgment summonses for debts not exceeding £20 having been virtually repealed or rendered useless by the Debtors' Act, 1869, it is unnecessary to consider their provisions. By the Debtors' Act imprisonment for default in payment of a sum of money, save in certain excepted cases, is abolished. The only exceptions which it is necessary to consider here are the following:—

Imprisonment for debt abolished, save as excepted by that Act.

Exceptions.

(1) Default by a trustee or person acting in a fiduciary capacity and ordered by a Court of Equity to pay a sum of money in his possession or under his control.

(2) Default by a solicitor in payment of costs ordered to be paid by him for misconduct as such, or in payment of money ordered to be paid by him in his character of an officer of the Court making the order.

(3) Default in payment of sums, in respect of the payment of which orders have been made which are in the said Act authorised to be made.

Section 5. M. C. may direct payment.

In any case coming within one of the above exceptions, the Mayor's Court may direct that any debt due from

(*t*) *Withers* v. *Parkes*, 28 L. J. Ex. 383; 4 H. & N. 810; 6 Jur. 22.

(*u*) *Witt* v. *Parker*, 46 L. J. Q. B. 450, C. A.; 36 L. T. N. S. 538; 25 W. P. 518.

any person in pursuance of any order or judgment of that *or any other competent Court,* shall be paid by instalments; and may from time to time rescind or vary *such order* (*v*); and may further commit to prison, for a term not exceeding six weeks (or until payment of the sum due), any person who makes default in payment of any debt, or instalment of any debt, due from him in pursuance of any order or judgment of the Mayor's Court or *any other competent Court* (*x*); provided that no person shall be imprisoned for a longer period than one year.

Payment by instalments of debt due under judgment or order of any competent Court.

May vary, &c., its order.

May commit person making default.

Proviso as to term of imprisonment.

Before the jurisdiction of committing to prison given by the Debtors' Act can be exercised by the Mayor's Court, it must be proved to the satisfaction of the Court, that the person making default either has, or has had since the date of the judgment or order, the means of paying, and has refused or neglected, or refuses or neglects, to pay the sum in respect of which he has made default. Proof of the means of a person making default may be given in such manner as the Court thinks just, and, for the purposes of such proof, the debtor and any witnesses may be summoned and examined on oath according to the rules to be made with the approval of the Lord Chancellor by the Judge of the Mayor's Court (*y*).

Condition precedent to the exercise of jurisdiction under s. 5 of Debtors' Act.

Means of payment to be proved.

How evidence to be given.

The order of committal can be made only by the Judge or his Deputy, and must be made in open Court, and must show on its face the ground on which it is

By whom and where order for committal may be made.

(*v*) See *post*, p. 120.
(*x*) See *post*, p. 119.
(*y*) See Appendix (E).

Jurisdiction to commit as to a judgment of High Court limited to £50, exclusive of costs.

issued. As respects a judgment of the High Court of Justice, such order can only be made when such judgment does not exceed £50, exclusive of costs. Any person imprisoned under that section shall be discharged out of custody on a certificate signed in the prescribed manner (*z*), to the effect that he has satisfied the debt or instalment in respect of which he was imprisoned, together with the prescribed costs (if any) (*a*).

Certificate of satisfaction of debt.

Rules for regulation of practice in M. C.

The Rules by which the practice of the Mayor's Court since January, 1870, has been regulated in respect of the powers vested in that Court by the first part of the Debtors' Act, 1869, will be found in the Appendix; but it is believed that the following notes of the practice as to judgment summonses will be found useful.

Practice of M. C. as to judgment and summonses.

Summons list called over.

Fifteen minutes' grace.

The list of summonses is called over at fifteen minutes after the time named for the return of a summons or for the adjournment of a case. If, on a case being called on, the debtor does not appear, it will be heard in his absence, and, if the creditor does not appear, it will be struck out.

Where parties are ready.

The Court will hear any summons in which the parties are ready at the time mentioned as the return of the same, or at the time mentioned as the adjournment thereof, notwithstanding that the fifteen minutes may not have expired.

Proof of service.

Evidence of the service of any summons may be given either in Court orally or by affidavit.

Where personal service has not been effected, no order to pay or commit will be made, unless it be

(*z*) See Appendix.

(*a*) See Appendix.

proved in open Court, to the satisfaction of the Judge or his Deputy, that reasonable efforts have been made to effect personal service, and either that the summons has come to the knowledge of the debtor, or that he wilfully evades service; but where personal service has been effected, an affidavit of the service may be made at any time before the order to pay or commit is issued.

Order to pay.

The order to pay is only required to be drawn up and served upon the debtor in case he fails personally to appear upon the hearing of the summons.

Issue of committal order.

No committal will be issued after the expiration of one calendar month from the time of the same being ordered, without leave of the Court.

Duration of such order.

A committal will only remain in force for six calendar months, and, if not executed within that time, can only be renewed by leave of the Court.

Where, after order of committal, money on account is received by creditor.

After an order of committal has been made, if a creditor, or his solicitor on his behalf, receive any money on account thereof, the committal will not be executed by the Serjeant-at-Mace, unless such money has been received by leave of the Court, or unless the Court order such committal to be executed, notwithstanding the the receipt of such money.

Costs.

The costs of any summons and hearing, and of the order of committal, are in the discretion of the Court, and must be applied for at the hearing of the case (*b*).

Before leaving this subject, it is necessary to call attention to the interpretation which was put by the Common Pleas Division upon the words "any order or

(*b*) See Appendix.

judgment of that or any other competent Court" in the case of *Washer* v. *Elliott*, decided in January, 1876 (*c*). In December, 1874, final judgment for £36 was signed against the defendant in an action in the Court of Common Pleas on a bill of exchange accepted by him. Neither plaintiff nor defendant dwelt or carried on business within the jurisdiction of the Mayor's Court, but the cause of action appears to have in part arisen therein (*d*). In February, 1875, the defendant was ordered by a Judge of the Common Pleas to pay to the judgment creditor the amount of the judgment debt with interest at four per cent. by weekly instalments of £1. The defendant made default in payment of the fifth instalment, and thereupon a judgment summons was issued by the Mayor's Court at the request of the judgment creditor, on which summons (the defendant appearing by his solicitor under protest) the Mayor's Court Assistant Judge ordered the defendant to pay the amount by weekly instalments of £2, varying thereby the order of the Common Pleas Judge. The defendant then applied for and obtained a rule *nisi* for a Prohibition, which was eventually made absolute with costs. The judgment of Grove, Archibald and Lindley, JJ., starts from the assumption that on the facts it was clear that the original cause of action accrued, and that the defendant dwelt and carried on business, beyond the limits of the local jurisdiction. It is admitted that the Mayor's Court in some circumstances has power, under the Debtors' Act, to make orders for payment, and to

Washer v. *Elliott* (Jan., 1876).

Facts of case.

Judgment of C. P., not exceeding £50, exclusive of costs.

Judgment summons issued by M. C.

Order made on summons.

Defendant obtained a Prohibition to M. C.

Judgment of C. P. D. assumes M. C. would have had no jurisdiction to try the original cause of action.

(*c*) L. R. 1 C. P. D. 169; 45 L. J. C. P. 144; 34 L. T. N. S. 56; 24 W. R. 432.

(*d*) At least the defendant's affidavit in support of his application for a Prohibition did not deny it.

commit not only in respect of judgments of other Inferior Courts (*e*), but also in respect of those of Superior Courts. By a "competent Court" is meant a Court acting within the local limits of its existing jurisdiction, and with reference to persons within those limits. It never could have been intended by the Legislature to enable an Inferior Court to rescind or vary the order of a Superior Court on a judgment of the latter. An order of committal would be beyond the competence of the Mayor's Court in this case. If so, all the preliminary steps leading up to that order ought to be prohibited. The object of the Statute was not to extend the local jurisdiction of Inferior Courts, but merely to render them auxiliary to the Superior Courts within their proper local limits. It was not necessary to decide (and the Common Pleas did not decide) the question whether, for the purpose of giving the Mayor's Court jurisdiction to make an order such as that complained of, the original cause of action must have arisen within the local limits. What it did decide was that the powers given by section 5 of the Debtors' Act cannot be exercised by the Mayor's Court over a debtor who, at the time he is summoned *upon a judgment of the High Court*, does not dwell or carry on business within the City. The proposition contended for by the defendant that the Act only intended to enable an Inferior Court to enforce the judgment of a Superior Court in cases where both Courts had concurrent jurisdiction over the subject

Meaning of words "any competent Court."

If M. C. would have no jurisdiction to commit, it has none to make orders leading up to a committal.

Object of Debtors' Act. What *Washer* v. *Elliott* did not decide.

What that case decided.

Observations on the judgment.

(*e*) What "Inferior Courts?" certainly not County Courts, so far as regards the jurisdiction to commit, which, as respects a County Court judgment, can be exercised only by a County Court Judge or his Deputy.

matter, was not adopted by the Court. The debt must be due in pursuance of an order or judgment of a competent Court; in other words, of a Court which had jurisdiction to make it. The debt in this case was due in pursuance of a judgment of the High Court, not exceeding £50; the instalment of the debt was due under an order of one of the Judges of the High Court. Clearly, then, it was an instalment of a debt due in pursuance of an order of a competent Court, and, if the debtor had been amenable to the local jurisdiction of the Mayor's Court by dwelling or carrying on business in the City at the time the judgment summons was served on him, that Court might have had jurisdiction, as the handmaid of the High Court, to enforce that order, if necessary, by committal. But could it even in such case have rescinded or varied the order of the High Court? A study of the language of the section points to the conclusion that it could not. The only order that "any Court" may from time to time rescind or vary is "such order" as it may itself have made, directing the mode of payment of a debt due under an order or judgment of itself or some other competent Court. "Such order," when made by the High Court, can be rescinded or varied only by a Judge of that Court. If so, the order of the Mayor's Court Judge was clearly *ultra vires*, and *a fortiori* it was illegal, being made against a person who was in no way amenable to the local jurisdiction.

Local Court might have committed defendant if within local jurisdiction.

But could not in any case rescind or vary order of High Court.

M. C. may rescind or vary its own order.

Order of M. C. in *Washer* v. *Elliott* clearly *ultra vires*.

10. PROCEDURE UNDER BILLS OF EXCHANGE ACT, 1855.

Bills of Exchange Act.

The Summary Procedure on Bills of Exchange Act, 1855 ("Keating's Act"), made it lawful for her Majesty by an Order in Council to direct that all or any part of the provisions of that Act should apply to all Courts of Record in England and Wales. The same power was conferred in regard to the Mayor's Court by the 46th section of the M. C. L. P. Act, 1857, as to the provisions of any Act for the amendment of the law then passed or thereafter to be passed. In accordance with these enabling powers, by the Order in Council of Nov. 17, 1863, all the provisions of the Bills of Exchange Act (sections 8, 9, and 10 excepted), were extended and applied to the Mayor's Court. The only alterations necessary to be made are that "plaint" is to be read instead of "writ" or "writ of summons," that by "the Court" is to be understood "the Mayor's Court," by "a Judge," the Judge (or Registrar) of the Mayor's Court, and by a "Master," the Registrar of that Court. By the 7th section the applicable provisions of the C. L. P. Acts, 1852 and 1854, and all rules made under or by virtue of either of the said Acts, are incorporated with the Act. The practice and procedure, therefore, in actions brought in the Mayor's Court under this Statute are governed entirely by the same rules as the practice in ordinary actions in that Court, *mutatis mutandis*. Nothing needs to be added to the information to be

18 & 19 Vict. c. 67, s. 9.

The Queen enabled to apply Act to Courts of Record in England and Wales.

M. C. L. P. Act, 1857, s. 46.

By Order in Council provisions of 18 & 19 Vict. c. 67, extended to M. C.

Section 7 incorporates C. L. P. Acts, 1852 and 1854.

found in the notes to the statute in Day's C. L. P. Acts (4th Ed.), and in the numerous books of practice under the Judicature Acts (*f*).

Proceedings in Ejectment.

11. PROCEEDINGS IN EJECTMENT.

C. L. P. Act, 1852; sections 168—221 apply to M. C.

It has been before stated that this Court has jurisdiction in actions of Ejectment (*g*). By the Order in Council of Nov. 17, 1863, all the provisions of the C. L. P. Act, 1852, with respect to actions of Ejectment contained in sections 168—221 (sections 202 & 217 alone excepted), so far as they are applicable to an action of ejectment between landlord and tenant, are extended and applied to the Mayor's Court, whose jurisdiction in such actions is thereby recognized.

Practice in Ejectment.

The practice and procedure, being governed by the C. L. P. Acts, are as nearly as possible identical with those in the Common Law Courts before the Judicature Acts.

Action begins by a Writ, not a plaint.

The only peculiarity to be noted is that, instead of the ordinary plaint in the Mayor's Court, the action is begun by a writ, a *sealed copy* of which must be served on the defendant or person named in the writ.

Reg. Gen. Hil. T., 1853.

Pl. R. Trin. T. 1853.

In addition to the above-mentioned sections, the practice is made conformable to the General Rules, Hil. Term, 1853 (112, 113, and 114), and to the Pleading Rules, Trin. Term, 1853 (29 & 30) (*h*). By the same

(*f*) See the notes in Wilson, 2nd ed. pp. 133—137.

(*g*) *Ante*, p. 70.

(*h*) See Day's C. L. P. Acts, 4th ed.

Order in Council, the 93rd section of the C. L. P. Act, 1854, was extended and applied to the Mayor's Court, under which section a new power is conferred on the Mayor's Court. Under the Act of 1852, the Court could stay the proceedings in a second action of Ejectment until the costs of the former had been paid, but could not compel the claimant to give security for the payment of the defendant's costs in the second action. This power it acquired by the above section of the Act of 1854. By the same Order in Council were also applied to the Mayor's Court the provisions contained in the first three sections of the C. L. P. Act, 1860, as to relief against forfeiture for non-payment of rent and for non-insuring.

C. L. P. Act, 1854; s. 93.

Effect of that section.

C. L. P. Act, 1860 ss. 1—3.

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12. DISCONTINUANCE AND STAY OF PROCEEDINGS.

A plaintiff may discontinue his action at any time. This is done, where service of the plaint has not been effected, by filing a withdrawal of the action. Where the plaint has been served but the defendant has not appeared, the plaintiff may file a withdrawal or obtain a rule to discontinue. In either case, if notice of withdrawal or copy rule to discontinue be served on the defendant before he appears, the plaintiff will have no costs to pay. Once the defendant has appeared, the plaintiff can only obtain the rule (*i*) on payment of

Withdrawal of action before service of plaint.

After service and before appearance.

No costs where defendant has notice of discontinuance before appearance.

(*i*) Which is applied for *ex parte* by filing a *præcipe* with the Registrar.

After appearance, costs.

costs, which, if a Declaration has not been delivered, are marked on the rule and are payable on the day after taxation. The defendant may, if the terms of the rule permit, make up a record and sign judgment for costs taxed, and costs of making up record and judgment. Thereupon execution may issue forthwith.

Consent rule to stay action on terms.

Where the plaintiff is willing to take his debt by instalments, and has agreed with the defendant as to the terms, he should draw up a consent rule to that effect. Where the defendant has appeared, all that is required will be his consent as to the time of payment, and the terms in case of default. Upon that being filed with the Registrar, a rule will be granted to stay the action on the terms of the consent, which may include the agreed amount of costs or the agreed terms as to taxation of costs. Should the defendant make default in payment, the plaintiff, if judgment has been signed, issues execution. If judgment has not been signed, the plaintiff signs judgment for "default under rule," and must annex the original rule to the judgment docket at the time of entry (*k*).

Where defendant makes default.

Reference to arbitration.

13. PRACTICE AS TO REFERENCE TO ARBITRATION.

Reference by consent of parties.

All actions in the Mayor's Court may be referred either wholly or in part to arbitration by consent of parties before the jury are sworn. After the jury are sworn the leave of the Court is necessary. Where it is necessary to compel the attendance of a witness,

(*k*) For the procedure where defendant tenders part of plaintiff's claim, see *ante*, p. 78.

or the production of any document or documents, a note giving the title of the action, the name of the witness, or the document required, is filed with the Registrar, and thereupon an order is made accordingly, disobedience to which is a contempt of Court.

Compulsory reference.

The power of the Court to refer an action without consent of both parties, but on the application of either, at any time after the action is commenced, is derived under the C. L. P. Act, 1854 (sections 3—18), applied to the Mayor's Court by the Order in Council of Nov. 17, 1863, and the practice of the Mayor's Court in regard to references under those sections may be taken to be the same as that of the Superior Courts before the Judicature Acts.

Practice the same as in Superior Courts under C. L. P. Act, 1854.

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14. POWERS OF AMENDMENT GENERALLY.

General powers of amendment.

M. C. L. P. Act, 1857; section 23.

All defects and errors *in any proceeding* in the Mayor's Court may *at all times* be amended by the Court, whether there is anything to amend by or not, and whether the defect or error be that of the party applying to amend or not. And all such amendments as may be necessary for the purpose of determining in the existing suit the real question in controversy between the parties *shall be so made* (*l*). The terms (if any) as to costs, &c., are in the discretion of the Court. This enactment, it is to be observed, is taken almost *verbatim* from the 222nd section of the C. L. P. Act, 1852, which section, therefore (as might be expected) is

Amendments which it is lawful for Court to make.

Amendments which Court shall make.

Terms in discretion of Court.

Enactment

(*l*) Compare the very similar language of R. S. C., Order xxvii., Rule 1.

borrowed from C. L. P. Act, 1852, s. 222.

not included in the sections of that statute extended and applied to the Mayor's Court by Order in Council (*m*).

C. L. P. Act, 1854, s. 96, introduces a qualification.

But the 96th section of the C. L. P. Act, 1854, having been by the said order extended and applied to the Mayor's Court must be read together with the 23rd section of the M. C. L. P. Act, 1857. It is limited to "proceedings under the provisions of this Act" (*i. e.*, the Act of 1854), and it qualifies the enactment as to the necessary amendments by adding the words "*if duly applied for.*" The meaning of those words obviously is that, where the application to amend is made at the proper time and in the proper form, the Court has no discretion, but must grant the application; whereas, if not duly applied for, the Court has a judicial discretion to make or refuse to make the necessary amendments. The 36th section of the C. L. P. Act, 1860 (also applied to the Mayor's Court by the same Order) is simply a re-enactment in terms of the section last quoted, but is limited in its application to proceedings under the provisions of the Act of 1860. With regard to the mode in which the Mayor's Court exercises the very large powers of amendment with which it has been armed by statute, it is enough to say that leave to amend, where amendment is necessary for the purpose of determining the real question in controversy between the parties, is never refused, and that terms are imposed only where to grant leave unconditionally would operate to the prejudice of the opposite party.

Amendment, if duly applied for, *must* be made. If not duly applied for, *may* be made.

C. L. P. Act, 1860, s. 36.

Practice in M. C. as to granting leave to amend.

(*m*) See the notes to that section in Day's C. L. P. Acts, 4th ed., pp. 216—219.

15. PRACTICE AS TO MOTIONS, RULES, AND ORDERS.

Practice as to motions, &c.

A Court sits daily.

As has been already stated (*n*), the Registrar or his Deputy sits daily as a Court for the transaction of all the business of the Court, except the trial of issues.

Interlocutory applications made to Registrar.

Applications to Judge in Court must be by counsel.

Costs of application to Judge.

When not allowable.

All interlocutory applications should be made to him in the first instance. When, however, the Judge is sitting, any application which is properly made to a Judge should be made directly to him, and must, unless he is sitting at chambers, be made by Counsel by way of motion. Where an application is made to the Judge in the first instance which might have been made to the Registrar, no costs of the application will be allowed, except in special circumstances.

Notice in writing to opposite party.

All applications (not *ex parte*) must be on written notice to the opposite party, which notice should be served or delivered by post before 6 P.M., in the case of an application to be heard on the following day. The notice should set out the order applied for.

Applications, when heard.

The hours for hearing applications are from noon to two, and fifteen minutes' grace is allowed. Where good ground for doing so is shown, the Court will allow a notice to be made returnable at 10 A.M., and in such case the notice should show on its face that it is so made by leave of the Court.

M. C. L. P. Act, 1857, s. 22.

May be heard at

Applications for rules to show cause in arrest of judgment, or for judgment *non obstante veredicto*, or for a repleader, or for granting new trials, and for entering nonsuits and verdicts in causes pending

(*n*) *Ante*, p. 2. Since the appointment of an Assistant Judge, any application involving anything more than mere routine may be heard by appointment before the Assistant Judge.

any time within jurisdiction.

in the Court, may be heard and granted by the Judge *at any time within the jurisdiction of the Court* (*o*).

Orders of the Court itself, when to be drawn up.

It must not be forgotten that any interlocutory order, such as the orders made at Judges' Chambers by the Judges of the High Court of Justice, is, in the Mayor's Court, an order of the Court itself, and must, therefore, be drawn up not later than the day following that on which it is made.

Affidavits in M. C.

16. AFFIDAVITS IN THE MAYOR'S COURT.

Before whom they may be sworn.

An affidavit to be used in the Mayor's Court may be sworn in the City before the Lord Mayor, any Alderman, the Recorder of the City, the Registrar or Deputy Registrar of the Court, or in any part of the United Kingdom before any magistrate or commissioner authorised to administer oaths in the Supreme Court.

Signature of person before whom affidavit is sworn.

If the person before whom it is made have a seal of office, that seal should be affixed to the jurat. If not, his signature must be verified in the Mayor's Court by affidavit, stating that the person before whom the affidavit purports to be sworn is authorised to administer

(*o*) *Sic* in the Act. Unless "time" is an error for "place," it gives the Judge a discretion as to when he hears applications, only restricting him as to the locality where he hears them. Compare *Lebeau* v. *General Steam Navigation Company* (Jan. 1873), L. R. 8 C. P. 129; 42 L. J. C. P. 76; 21 W. R. 358; where an attempt was made in the argument to restrict the operation of the section to the time during which a cause is pending in the M. C. The Common Pleas held that they had no jurisdiction to interfere after they had once disposed of a motion on a point reserved under the M. C. L. P. Act. *Sed quære.*

oaths; that the signature to the jurat is the signature of the person there named, or is so, to the best of the information and belief of the deponent, who is acquainted with his handwriting and signature.

In all other respects it may be safely assumed that the rules of the Mayor's Court as to affidavits to be used in that Court are, as nearly as possible, the same as the rules in the Common Law Courts before the Judicature Acts (*p*). Documents which may be required to be produced in any foreign country, or elsewhere out of the jurisdiction of the Court, may be authenticated by oath administered or declaration taken by the Judge of the Mayor's Court in or out of Court.

Generally, rules in M. C. as to affidavits same as in Superior Common Law Courts.

M. C. L. P. Act, 1857, s. 44. Authentication of documents for production out of jurisdiction.

Infancy.

Infancy.

Where the plaintiff is an infant, an application should be made *ex parte* by, or on behalf of, the infant to the Court for an order for liberty to sue by his *prochein amy* (or next friend). The application should be intituled in the Mayor's Court, London. It must be made before the action is entered, and a copy of the order must be served with the plaint. It must be signed by the infant (if he or she can write), and the signature must be attested. Appended thereto must be the written and signed consent of the next friend to the order asked for. Where the defendant is an infant,

Application by Infant plaintiff for leave to sue by next friend. How made.

Same application

(*p*) See Reg. Gen. Hil. T. 1853, rr. 138—148, and Rules, Mich. Vac. 1854, r. 2. Day's C. L. P. Acts (4th ed.).

by infant defendant.

a similar application—which must be intituled in the cause—is made (before appearance) for liberty to defend by guardian. A copy of the order must be served with the notice of appearance. The special admission of a next friend or guardian applies to the particular action only.

Costs.

Costs in the Mayor's Court.

§ 1. Security for costs. Rules as to same as in Superior Court.

In making an order for security for costs, the Mayor's Court proceeds on the well-known principles and rules formerly followed in the Common Law Courts and now followed in all Divisions of the High Court of Justice. For those principles and rules, reference should be made to the notes in Day's C. L. P. Acts (4th ed.) to the 22nd Rule of Reg. Gen. Hil. T. 1853 ("An application to compel the plaintiff to give security for costs must, in ordinary cases, be made before issue joined"), and to the numerous cases therein cited and commented upon (*q*).

What "residence out of jurisdiction" means as to M. C.

It should not be forgotten that *permanent residence out of the jurisdiction* (which, in the case of a plaintiff, is *primâ facie* ground for an application for security for costs) must be taken, in the case of a plaintiff suing in the Mayor's Court, to mean *out of the United Kingdom*, and not merely out of the local jurisdiction

(*q*) See also 2 Chitty's Archbold, Tidd's Practice, vol. i., p. 534 pp. 1402—1409, 11th ed., and 9th ed.

of the City Court (*r*). The amount of the security in each case is entirely in the discretion of the Registrar, and varies with the requirements of the case. It may be given in any of the three different ways—by payment into Court of the sum required by the Registrar; by the undertaking of the plaintiff's solicitor; by bond. If the proposed security is by bond, two days' notice must be given to the opposite party of the person or persons proposed as surety or sureties, and on the expiration of the two days' notice—no objection having been made—the bond is entered into. Where any objection is taken to the proposed sureties, an appointment is given by the Registrar, who determines the question as to their sufficiency either upon affidavit or by examination of the sureties. As to the security for costs in Ejectment actions, see *ante*, p. 123.

Amount in Registrar's discretion.

How security may be given.

§ 2. Costs generally. M. C. L. P. Act, 1857, s. 11. Plaintiff recovering sum not exceeding £5 in action of contract, and 40s. in action for a wrong to have no costs unless Judge at trial certify to

If in any action in covenant, debt, detinue, or assumpsit (not being an action for breach of promise of marriage), the plaintiff shall recover a sum not exceeding *five pounds*, or if in any action in trespass, trover, or case (not being an action for malicious prosecution, or libel, or slander, or seduction), the plaintiff shall recover a sum not exceeding *forty shillings*, the plaintiff shall have judgment to recover such sum only and *no costs*, unless the Judge before whom such verdict shall be obtained shall certify on the back of the record that it appeared to him that there was a sufficient reason for bringing the said action in the Mayor's Court, and in

(*r*) "Out of the jurisdiction," for this purpose, means "out of the reach of the process of the Court." By the Judgments Extension Act, 1868 (31 & 32 Vict. c. 54), a plaintiff residing in any part of the United Kingdom is brought within reach of the process of the Mayor's Court.

entitle plaintiff to costs, or the Court make an order for plaintiff to have costs.

such case the plaintiff shall have judgment to recover his costs of suit; or if (when there is no verdict) the plaintiff shall make it appear to the satisfaction of the Mayor's Court, on summons, that there was a sufficient reason for bringing the said action in that Court, in such case the Court (*i.e.*, the Registrar) *may*, by rule or order, direct that the plaintiff shall recover his costs, and thereupon the plaintiff shall have judgment to recover his costs accordingly.

Effect of section stated.

Put shortly, the effect of the above enactment is that in the Mayor's Court the recovery of £5 in contract and of £2 in tort *does not carry costs*.. Where the action is

(1) Where there is a trial and verdict.

tried in open Court (not necessarily by a jury), and results in a verdict for no more than £5 in contract, or no more than £2 in tort, the plaintiff will not be entitled to *any costs* at all, unless the Judge who tried the cause certifies on the back of the record that it appeared (not "appears") to him at the trial that there was a sufficient reason for bringing the action in the Mayor's Court instead of

No certificate, no costs.

in the County Court. In the absence of such certificate, the plaintiff has no means whatever of recovering judgment for anything more than the bare amount of the *verdict*.

Where there is no verdict, and where, consequently, it is impossible for the plaintiff who "recovers" no more than £5 in contract or £2 in tort to obtain a certificate on the back of the record from "the Judge before whom such verdict was obtained," a different

(2) Where amount is recovered otherwise than by

mode of recovering his costs of suit is prescribed. In that case he must satisfy the Registrar of the existence of the "sufficient reason" which would, if the amount

had been recovered by verdict, have entitled him to a certificate for costs from the Judge. The application for that purpose is not *ex parte* but "on summons," and the plaintiff must give the defendant a day's notice to show cause why the plaintiff should not be at liberty to recover his costs, and should not have judgment to recover such costs accordingly. If the "sufficient reason" be not made apparent to the satisfaction of the Registrar, the plaintiff will get no order.

verdict, plaintiff must satisfy Registrar on summons of the sufficient reason, &c.

The 34th section of the C. L. P. Act, 1860, was by Order in Council extended and applied to the Mayor's Court, but as that section was wholly repealed by the County Courts Act, 1867, it needs not to be considered here. It is enough to point out that it deprived a plaintiff, who recovered less than £5 by the verdict of *a jury* in an action of tort, of all costs in respect of such verdict, if the Judge, &c., certified (*inter alia*) that the action was *not fit to be brought*, thus extending the operation of 3 & 4 Vict. c. 24, s. 2.

C. L. P. Act, 1860, s. 34, applied to M. C., but repealed by 30 & 31 Vict. c. 142, Sched. (C.)

By the 29th section of the County Courts Act, 1867, in *any action* or suit brought in the Mayor's Court (*s*) which could have been brought in a County Court, if the plaintiff recover a verdict for less than £10, he shall not recover from the defendant a greater amount of costs than he would be allowed if the action or suit had been brought in a County Court, unless the Judge shall certify that the action or suit was a fit one to be brought in the Mayor's Court. This enactment, be it observed, applies to all actions *and suits* whether in

30 & 31 Vict. c. 142, s. 29. A County Court action may be brought in M. C., but unless plaintiff recover £10 he is only entitled to County Court costs without certificate.

(*s*) The words of the section are "in any other Court than the Superior Courts of Law;" *e.g.*, the Mayor's Court.

Observations on the section.

contract or tort, and whether on the Common Law or the Equity side of the Court, unnecessarily brought and tried in the Mayor's Court. If the action or suit be one which the County Court has no jurisdiction to entertain, it is not within this section. If, on the other hand, it be one which could have been brought in a County Court, it is for the plaintiff to justify his having brought it in the Mayor's Court, where the scale of costs is higher than in the County Court. If he recover a verdict for £10, that is a sufficient justification. If the verdict be for less than £10, he will be treated in the matter of costs as if he had sued in the County Court, unless the Judge certify that it was a fit action or suit to be brought in the Mayor's Court. Provided he obtains that certificate, he will be allowed costs on the Mayor's Court scale, but not otherwise. The certificate need not be "on the record," and may be given at any time before the costs are taxed. If the Judge refuse to certify, no application can be made to the Registrar to allow them, and there is no appeal from the exercise of the Judge's discretion.

Practice as to costs in petty cases.

In practice, the recovery of less than £5 in an action of contract is generally held by the Judge to be conclusive evidence that the action ought not to have been brought in the Mayor's Court, and it would require very special circumstances indeed to induce him even to listen to an application for costs. A verdict for anything over five (but under ten) pounds in contract entitles a plaintiff to costs on the County Court scale, and to have his application for a certificate for costs on the higher scale entertained, but it will not be granted

unless he can show that there was a sufficient reason for occupying the time of a Judge, two counsel, and twelve jurymen in deciding a case which might have been decided in the City of London Court. The Mayor's Court may be—and is—an Inferior Court of Record; but its machinery is not adapted for infinitesimal litigation, and those who want to have their petty claims settled in a City Court of Justice should resort to the City Court for the recovery of small debts.

Summary of Procedure and Practice.

Rules of Law in Superior Court generally are binding on M. C.

It may be accepted as a safe principle on which to act generally in proceedings in an action in the Mayor's Court, that all *rules of law* enacted and declared by Statute as binding on the High Court of Justice are recognised and are given effect to by the Mayor's Court. With regard to the rules of law enacted and declared by the Judicature Act, as has been already noticed (*t*), it is expressly provided that they are to be in force *in all Courts whatsoever in England*, so far as the matters to which they relate are respectively cognisable by those Courts (*u*).

Express provision as to rules of law enacted, &c., by Judicature Act.

By what statutes practice of M. C. is governed.

The practice and procedure in an ordinary action are governed by the Mayor's Court Procedure Act, 1857, supplemented by such of the provisions of the three Common Law Procedure Acts of 1852, 1854, and 1860, and other statutes as were extended and applied to the

(*t*) *Ante*, pp. 66, 67.

(*u*) Judicature Act, 1873, s. 91.

Mayor's Court by the Order in Council, Nov. 1863 (*x*), and have not been expressly repealed by subsequent legislation (*y*).

Reg. Gen., Hil. T., 1853.

The *Regulæ Generales* of Hil. Term, 1853, were not made in pursuance of the C. L. P. Act, 1852 (s. 223), but under the general powers of the Superior Courts of Common Law; they were not laid before Parliament (as were the Pleading Rules of Trin. Term, 1853), and, therefore, have no operation (as have the said Pleading Rules) to alter any statutory provision whatever. Nothing contained in those Rules is *binding* on the Mayor's Court, but it is scarcely an exaggeration to say that, *mutatis mutandis*, all the information that is needed as to the *unwritten* rules of practice in the Mayor's Court may be gathered from the *written* rules of practice consolidated by the learned Judges who framed the Rules of Hilary Term, 1853. If they are not to be found there, they are *in gremio judicum*.

Where nothing is said to the contrary, practice of Common Law Courts may be assumed to prevail in M. C.

Lastly, it may be assumed that, wherever the foregoing pages are blank with regard to the practice and procedure in any particular (*e.g.*, interrogatories, discovery, inspection, and production of documents, mandamus, injunction, &c., &c.,) the practitioner may safely follow the Common Law practice in the Superior Courts before the Judicature Acts.

(*x*) See Appendix.

(*y*) *e.g.*, C. L. P. Act, 1860, s. 34, repealed by 30 & 31 Vict. c. 142, s. 33.

PART III.

THE MODE OF PLEADING IN AN ORDINARY ACTION IN THE MAYOR'S COURT.

Mode of pleading in M. C.

THE Mayor's Court Procedure Act, 1857, was passed with the object (*inter alia*) of amending "the mode of pleading" in the Mayor's Court (*a*). The only sections which deal expressly with the mode of pleading are the 12th and 15th, which have been already discussed in Part I. on the jurisdiction of this Court (*b*). One (s. 15) abolishes, so far as the defendant is concerned, all proceedings whatsoever by means of which, until the passing of the Act, an objection to the jurisdiction might have been raised, except a plea to the jurisdiction (*c*). The other (s. 12) takes away expressly the right of a defendant, sued under the conditions therein specified, to avail himself in the Mayor's Court of the only mode of objecting to the jurisdiction that is not abolished by the Statute (*d*).

M. C. L. P. Act, 1857 passed to amend mode of pleading in M. C.

Sections 12 and 15.

The mode of pleading was further amended in November, 1863, by the partial extension and application to the Mayor's Court of the enactments of the C. L. P.

Parts of C. L. P. Act, 1852

(*a*) See title of the Act, and compare Preamble.
(*b*) See *ante*, pp. 7-42.
(*c*) See *ante*, pp. 8-26, and *post*, pp. 141—144.
(*d*) See *ante*, pp. 26-51.

extended and applied to M. C.

Act, 1852, an Act passed with the object (*inter alia*) of rendering the mode of pleading in the Superior Courts "more simple and speedy" (*e*).

Sections 49—57. Language and form of pleadings in general.

The sections which deal with "the language and form of pleadings in general" are sections 49—57, as to which but little needs here be said. Special demurrers are abolished, but any pleading may be demurred to as

Section 51. not setting forth sufficient ground of action, defence, or reply, and judgment on such demurrer is to be given according to the very right of the cause and matter in

Section 50. law. Fictitious and needless averments shall be omit-

Section 49. ted, and, if inserted with the effect of embarrassing the

Section 52. other party, may be struck out under the section which empowers the Court or a Judge to strike out or amend any pleading so framed as to prejudice, embarrass, or

Section 53. delay the fair trial of the action. For Rules to declare, reply, or rejoin is substituted a four days' notice to the

Section 54. opposite party. *All pleadings* are, in the absence of a special order to the contrary, to be dated and entered

Section 55. as of the actual day of pleading. *Profert* and *oyer* are

Section 56. abolished, and, where a document is referred to in any pleading, the party pleading in answer thereto may set out the whole or the material part of such document as part of his pleading. The performance of conditions

Section 57. precedent may be averred generally by either party, but shall not be denied generally; the party intending to contest the performance of any condition or conditions must specify it or them in his pleading.

Statement of causes

The examples of statements of causes of action and

(*e*) See Preamble.

forms of pleading scheduled to the Act (*f*) were also applied to the Mayor's Court, the 91st section enacting that the said forms shall be "sufficient," but that, so long as the substance is expressed without prolixity, the letter need not be strictly adhered to (*g*).

Forms of action and forms of pleading. Section 91.

THE DECLARATION.—The only sections relating to the mode of declaring which have been applied to the Mayor's Court are sections 60 and 61, the first of which gives the form for commencing a Declaration after plea of non-joinder, while the other makes a Declaration for libel or slander sufficient if the words set forth disclose a cause of action, with or without the *innuendo*. The 59th section, prescribing the form of commencement and conclusion of *every Declaration*, was not extended to this Court, probably because it could not have been applied to *every Declaration in that Court* without tampering with the customary count which has for centuries been in use there, known as the count *sur concessit solvere*.

The Declaration. Sections 60, 61.

Section 59 does not apply to M. C.

This may be regarded as a general *indebitatus assumpsit* count, embracing all debts and liquidated money demands, including bills of exchange (*h*) and promissory notes. In it the plaintiff, after demanding £—— of him, alleges that the defendant on some day (any day before action entered will do) in the —— year of the reign of Her present Majesty, &c., at the parish of St. Helen, London, *and within the jurisdiction of this Court* (*i*) for and in consideration of divers sums of

Count *sur concessit solvere*.

Form of count.

(*f*) Day's C. L. P. Acts (4th ed.), pp. 237-243, schedule (B).

(*g*) See note to s. 91 in Day, pp. 120, 121.

(*h*) See *Sewell* v. *Cheetham*, *post*, p. 144.

(*i*) This allegation has been introduced in modern times, and is a

money before that time due and owing from him to the plaintiff at the parish *and within the jurisdiction aforesaid,* and then being in arrear and unpaid *granted and agreed to pay* (*concessit solvere*) to the plaintiff the said sum of £—— above demanded, where and when he should be thereunto afterwards required; yet, notwithstanding, the said defendant, although often thereto requested, hath not yet paid to the plaintiff the said sum of £—— above demanded, or any part thereof, to the damage of the said plaintiff twenty shilling; and therefore he brings his suit, &c.

Pleas, &c. C. L. P. Act, 1852; sections applied to M. C. Sections 64-67.

PLEAS AND SUBSEQUENT PLEADINGS.—The sections of the Act applied to this Court are ss. 64-71, 74-80, 87-89. Express colour, special traverses, prayer of judgment, and formal commencements and conclusions of pleas are abolished. Pleas are to begin with a simple statement of what the defendant says, and to state

Section 68. whether he says it by his solicitor or in person. Any defence arising after action is to be pleaded according to

Section 69. the fact. The plea *puis darrein continuance* is to be

Section 70. allowed only subject to restrictions (*k*). It is lawful for the defendant in all actions (save such as are therein expressly excepted) to pay into Court a sum of money by way of compensation or amends, and such payment,

Section 71. when made, is to be pleaded in all cases as nearly as may be in the form prescribed, *mutatis mutandis.* Sections 72 and 73 do not apply to this Court. To

Section 74. preclude doubts as to the *form* of Pleas, it is enacted

departure from the old practice since the time of the Year Books, Edwd. IV. See judgment of Bovill, C.J., in *Cooke* v. *Gill*, L. R. 8 C. P. at p. 113. *Ante*, p. 6.

(*k*) Omit the provision as to pleading at *Nisi Prius* during Long vacation.

that no plea that is good in substance is to be objected to on the ground that it treats the Declaration either as framed for a breach of contract or for a wrong (breach of duty).

Pleas of payment and set-off, and all other pleadings (including Declarations) capable of being construed distributively, are to be so construed. Section 75.

A defendant may traverse generally such facts as might have been denied by one plea, or traverse separately any material allegation in the Declaration; while plaintiff may traverse by a general denial the whole of the defendant's pleading, or may admit part and traverse the rest,—a liberty which section 78 extends to defendants. Either party may deny the substance of his opponent's pleading by joining issue thereon. Either party, by leave of the Court, may plead and demur to the same pleading at the same time on an affidavit (if required), and the Court, if, in the exercise of its discretion, it grant the leave applied for, will direct which issue shall be first disposed of. Sections 81—86 were not extended to this Court. Only one new assignment may be pleaded to any number of pleas to the same cause of action. No plea is to be repeated without leave, which is to be granted only on proof that the repetition is essential to a trial on the merits. The 89th section prescribes the form of demurrer and joinder in demurrer, and provides that any demurrer delivered without a marginal statement of some *substantial* matter of law intended to be argued may be set aside by the Court. Section 76. Section 77. Section 78. Section 79. Section 80. Section 87. Section 88. Section 89.

Plea to the Jurisdiction.—As has been already pointed

Plea to the jurisdiction the only way of taking objection in the M. C. Not a dilatory but a peremptory plea.

out, an objection taken *in this Court* to the jurisdiction must be taken "*by plea*," if at all. It has been sometimes doubted whether the "plea" referred to in section 15 of the M. C. L. P. Act is a *dilatory plea*, admitting the general jurisdiction of the Court but exempting the defendant upon special grounds, or a *plea in bar* of the action, on the ground that the jurisdiction of the Court is limited to a class within which the particular claim does not fall. That doubt was finally resolved by Willes, J., in advising the House of Lords in *the Mayor, &c., of London* v. *Cox* (*l*), by showing that in an Inferior Court an objection to jurisdiction in the form of a dilatory plea is always unnecessary and out of place, as indeed it would be even in a Superior Court when the objection is that the limits of local jurisdiction are transgressed. Since the decision in *Hawes* v. *Paveley* there is no reason why any defendant who takes exception to the exercise of jurisdiction over him by the Mayor's Court should raise his objection in that Court, when there is a far more speedy and certain method of staying the proceedings by means of a prohibition. As, however, the defendant may, if he so please, raise the objection (except under certain conditions) by means of a special plea, it is necessary that he should be made aware of the conditions under which that plea must in this Court be pleaded. First, then, it must be pleaded in person, and not by solicitor (*m*). Secondly, it must—though not a dilatory plea—be verified by affidavit, in which the defendant swears that

No reason for pleading to jurisdiction when prohibition can be had.

Conditions under which a plea to jurisdiction is pleaded in M. C.

(*l*) L. R. 2 H. L. 239 at p. 260.

(*m*) That is not peculiar to the Mayor's Court.

the allegations contained in the plea with which it is delivered are "true in substance and in fact" (*n*). Thirdly, it must be pleaded within four days from the delivery of the Declaration (*o*). Fourthly, it cannot be joined with any other plea, as a defendant will not be allowed to admit and deny the jurisdiction in the same pleading. He cannot, therefore, pay money into Court in satisfaction of so much of the claim as he admits to be due and to be within the jurisdiction, and, as to the rest of the causes of action, plead to the jurisdiction. The form of the plea necessarily varies with the amount claimed in the action. If the amount exceed £50, the case cannot be within the terms of section 12; whereas, if it do not exceed £50, it may be within that section. Where the claim exceeds £50, the plea must allege that the said supposed causes of action, *and each and every of them*, accrued to the plaintiff out of the jurisdiction, &c., and not in the parish of St. Helen, London, or elsewhere within the jurisdiction; and these allegations he must state that he is ready to verify on oath.

Cannot be pleaded where money is paid into Court.

Form of plea varies with amount claimed.

Form, where claim over £50.

Where the claim does not exceed £50, the plea must allege the non-existence of all and each of the conditions, the existence of any one of which, by virtue of the 12th section, will make the jurisdiction of the Court unimpeachable (*p*). In either case, if the defendant fail in proving the allegations of his plea—or, rather, if the plaintiff succeed in proving affirmatively the existence of any fact denied or not admitted by the plea—the plaintiff will be entitled to a verdict for the amount

Form, where claim not over £50.

If plaintiff succeeds on the plea to the jurisdiction, he succeeds in the action.

(*n*) 4 & 5 Anne, c. 16, s. 11.
(*o*) *Ryland* v. *Wormwald*, 5 Dowl. 581.
(*p*) See *ante*, p. 10.

claimed, there being no other plea on the record. If, on the other hand, the defendant should succeed in proving that the Mayor's Court has no jurisdiction to entertain any part, however insignificant, of the plaintiff's claim, he must be content to prove it at his own expense, and will get no order for costs against the plaintiff from a Court which, by his own showing, is incompetent to award him any. If there is no evidence to go to the jury in support of the claim to the jurisdiction, the defendant may ask for a nonsuit, and, in the alternative, for leave to move under section 10 of the M. C. L. P. Act, as was done by the defendant in the case of *Sewell* v. *Cheetham* (*q*).

If defendant succeeds, he gets no costs.

Sewell v. *Cheetham*, (May, 1874.)

In that case the plaintiff declared in *concessit solvere* as indorsee of a bill of exchange against the defendant as acceptor, and the defendant pleaded to the jurisdiction. At the trial the bill (which purported to be drawn at Stockport) was produced and put in evidence, and a witness was called to prove that he knew Smith, Payne and Smiths (where the bill was made payable) to be bankers in the City of London. No evidence was offered of the drawing, acceptance, indorsement, presentment, or dishonour of the bill, it being assumed (rightly) that the only matter of fact put in issue by the plea was whether any part of the cause of action accrued within the parish of St. Helen, London, or elsewhere within the jurisdiction, and (wrongly) that the evidence called for the plaintiff decided that issue in his favour. A verdict was entered for the plaintiff, the defendant having leave to move to enter a nonsuit. On the

Facts.

Verdict for plaintiff.

(*q*) L. R. 9 C. P. 420; 43 L. J. C. P. 239; 22 W. R. 695. Those who desire a precedent for a Plea to the Jurisdiction in an action within s. 12 of M. C. L. P. Act will find the plea set out in the L. J. report.

argument of the rule *nisi*, granted by the Court of Common Pleas, it was contended for the plaintiff that the drawing, acceptance, indorsement, and dishonour were all admitted by the plea, and that the bill itself proved dishonour *in the City*.

Judgment of C. P.

The Court, however (Lord Coleridge, C.J., Brett and Denman, JJ.), while conceding that the plea admitted presentment and dishonour of the bill *somewhere*, held that there was no evidence of its having been presented and dishonoured at the bank where it was made payable, and none, consequently, that any part of the cause of action arose within the jurisdiction. According to Brett, J., the plaintiff had not made out even a *primâ facie* case. The rule to enter a nonsuit was accordingly made absolute. If the bill had been accepted *specially* payable at the head office of Smith, Payne and Smith's bank in the City, the plaintiff would only have had to put in the bill and call a witness to prove that the bank was in the City. That evidence, coupled with the admission of the defendant by his plea that he was the acceptor, and that the bill had been duly presented and dishonoured, would have entitled the plaintiff to a verdict. But, if the bill had been made *specially payable* in the City, the defendant would hardly have been advised to plead to the jurisdiction.

Had the bill been specially payable in the City, case would have been within terms of s. 12, and no plea to jurisdiction would have been allowed.

THE PLEA OF NEVER INDEBTED.—This plea is made by the only *Regula Generalis* ever issued by the Mayor's Court since the Act of 1857, the stereotyped defence to every action in which the plaintiff declares in *concessit solvere*. The rule runs as follows: The plea "never was indebted" *shall be used* in the Mayor's Court to the

Plea of "Never Indebted" must be pleaded to *concessit solvere*.

General rule as to operation

of the plea of "Never Indebted," in actions for goods sold, &c.

customary count *sur concessit solvere*, and will operate as a denial of those matters of fact from which the liability of the defendant arises; *e.g.*, in actions for goods bargained and sold or sold and delivered, the plea will operate as a denial of the bargain and sale or sale and delivery in point of fact. In the like action for money had and received, it will operate as a denial both of the receipt of money and of the existence of those facts which make such receipt by the defendant a receipt to the use of the plaintiff (*r*), and on bills of exchange and promissory notes the drawing, making, or indorsing, or accepting; but if the defence be for other matters, as not presenting, or not giving notice of dishonour, or no consideration, notice thereof must be given of such defence with the plea, but such defences as bankruptcy or statutes of limitations, &c., must be pleaded (*s*).

For money had, &c.

On Bills of Exchange, &c.

Where notice of defence must be given with plea.

What defences must be pleaded specially.

PLEADING COUNTERCLAIMS SINCE THE JUDICATURE ACT.—It has been already pointed out (*t*) that, under the provisions of the Judicature Acts, the Mayor's Court has jurisdiction to try a counterclaim set up by a defendant involving matters altogether outside the local boundaries, so far as such counterclaim affords a defence to the plaintiff's claim. No provision, however, was made in the Judicature Acts for the *mode of pleading* a counterclaim in the Mayor's Court, and as the pleading rules adopted under those Acts in the High Court of

Mode of pleading counter-claims in M. C.

Not provided for by Judicature Acts or Rules.

(*r*) This rule is taken *verbatim* from the third of the examples given in Rule 6 of the Pleading Rules, Trin. T., 1853. Day (4th ed.).

(*s*) Here the Mayor's Court has necessarily departed from the Common Law pleading rules, which make both *non assumpsit* and "never indebted" inadmissible pleas in actions on bills or notes (Rule 7). By Rule 8 all matters of confession and avoidance in all actions on contract are to be specially pleaded.

(*t*) *Ante*, pp. 65—69.

Justice have not been ordered to apply to this Court, considerable doubt has been felt as to the proper mode of pleading in reference to counterclaims. It is submitted, however, that there ought to be no doubt on the subject. The Mayor's Court is both competent and bound to entertain any claim, whether in debt or damages, whether within or without its jurisdiction, when set up by way of defence to an action in that Court. But the *mode* in which such claim is pleaded is a matter over which the Mayor's Court has a primary control, and, in the absence of any regulation to the contrary, it must be assumed that a claim set up by a defendant is to be pleaded as nearly as may be in the same form as would be used if the like claim were set up by the plaintiff. The counterclaim should in form be like any other *numbered* plea, and should commence thus: "And, by way of counterclaim, the defendant says that, &c." (*u*); and should conclude with a claim for £—(if the amount be liquidated) or for damages, &c. (if the amount be unliquidated), or (where necessary) for such other and further relief as the nature of the case may require.

M. C. no power to refuse to try any claim set up as a defence, but has power to say *how* it shall be set up.

Particulars of counterclaim should, of course, be given with the pleas, just as, under the practice before the introduction of counterclaims, the defendant had with his pleas to supply particulars of set-off (*x*), and the plaintiff to supply particulars of demand with or after Declaration.

Particulars of counterclaim.

In pleading to a counterclaim, the plaintiff should treat it as one of the pleas and not as a statement of

How a counterclaim

(*u*) Here state the cause of action as in a Declaration.

(*x*) *Ante*, p. 81.

should be pleaded to.

claim. In other words, he should not divide his Replication into two separate pleadings, consisting of a joinder of issue on the pleas proper and a defence to the cross claim, but should state, in a separate numbered paragraph and in the same form that he would use in pleading to a Declaration, his answer to the counter-claim. Upon that the defendant should join issue simply.

Summary as to practice of M. C. in matters of pleading.

To sum up the practice of this Court in *matters of pleading*, it may be said that it is still governed *absolutely* by such of the provisions as to pleading contained in the C. L. P. Acts as were expressly extended and applied to this Court by Order in Council; that, further, it is virtually governed by the Pleading Rules of Trinity Term, 1853, made by the Judges in pursuance of the C. L. P. Act, 1852, wherever those rules are not inconsistent with the customary mode of pleading in *concessit solvere*, and with the solitary Pleading Rule above referred to as having been framed by this Court under the powers conferred by the M. C. L. P. Act. The rules which govern the reformed system of pleading introduced into the Superior Courts in 1875 do not govern (as yet) the unreformed system of pleading in this Court.

APPENDIX.

(A)

THE MAYOR'S COURT OF LONDON PROCEDURE ACT, 1857. 20 & 21 VICT. CAP. CLVII.

An Act for abolishing certain Jurisdiction of the Sheriffs Courts of the City of London, and for amending the Process, Practice, and Mode of Pleading in the Mayor's Court, and for extending the Jurisdiction thereof.

[17*th August*, 1857.]

WHEREAS there exist in the City of London certain Courts of Law called respectively the Sheriffs Court of the Poultry Compter, and the Sheriffs Court of the Giltspur Street Compter: And whereas it is expedient that certain functions and jurisdiction of the said Sheriffs Courts should be abolished: And whereas it is expedient to make the Mayor's Court more efficient, by extending its powers and simplifying its practice and mode of procedure: May it therefore please your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows; (that is to say,)

1. This Act shall commence and come into operation on the first day of October one thousand eight hundred and fifty-seven. Commencement of Act.

Short title.

2. In citing this Act in other Acts of Parliament and in legal instruments and other proceedings it shall be sufficient to use the expression "The Mayor's Court of London Procedure Act, 1857."

No action or suit to be brought in Sheriffs Court, except in certain cases.

3. From and after the commencement of this Act no action or suit for the recovery of any debt or demand shall be commenced in the Sheriffs Court either of the Poultry Compter or of the Giltspur Street Compter, save only and except pleas of personal actions under the provisions of the London (City) Small Debts Act, 1852, which may continue to be brought as heretofore in the Sheriffs Court without being entitled as of either Compter: Provided always, that nothing in this Act contained shall be deemed or construed to take away or diminish the power or authority of the sheriffs of London or either of them to execute any writ of inquiry or other writ or mandate which may be directed to them by any Court of competent authority, or by any Judge or officer thereof, or by any person lawfully authorised to issue the same, or any writ of trial which may be directed to them or either of them under or by virtue of the provisions of the Act of Third and Fourth William the Fourth, chapter forty-two, nor to take away or diminish any other power or authority which the sheriffs of London or either of them can have or hath or can or may lawfully exercise by Act of Parliament, charter, act of Common Council, custom, prescription, or otherwise howsoever.

In error from the Mayor's Court, the Exchequer Chamber, and not the Court of St. Martin's-le-Grand, to be the Court of Error.

4. And whereas it is expedient to facilitate the proceedings in error on matters arising in the Mayor's Court: Therefore, from and after the commencement of this Act, no petition shall be presented to or be received by the Lord High Chancellor for any writ of error to review any proceeding in the Mayor's Court, nor shall any writ of error be issued thereout to review any such proceeding, nor shall any writ or other proceeding be issued to the Court of Saint Martin's-le-Grand for any purpose as a court of error to review any proceeding of the Mayor's Court, but in all cases of error arising on proceedings in the Mayor's Court the Exchequer Chamber shall be the Court of Error for the purposes of this Act, and all matters in error shall be proceeded with according to the

rules to be framed for that purpose as is hereinafter expressed (p. 89).

Special case may be stated for opinion of Court, or of Courts of Common Law.

5. The parties in any action or foreign attachment may, after issue joined, by consent, and by the order of the Court, state the facts of the case in the form of a special case for the opinion of the Court, or of any one of the Superior Courts, and may agree that judgment shall be entered thereon for the plaintiff, garnishee, or defendant, as the Court or such Superior Court may think fit (p. 101).

Special cases to be transmitted by the Registrar to Rule Department of the Master's Office of Superior Court.

6. When the opinion of such Superior Court shall be required the Registrar of the Mayor's Court shall transmit such special case, under the seal of the Court, to the Rule Department of the Master's Office of the Superior Court in which the case is to be argued, and thereupon all such proceedings shall be taken and rules and regulations observed in the said Superior Court as are usual with reference to cases stated for the opinion of such Superior Court in actions therein pending (p. 102).

Registrar to enter judgment upon production of office copy rule.

7. The Registrar of the Court, upon the production of an office copy of the rule of the Superior Court made upon hearing the said special case, shall enter judgment in the Court in conformity with the decision of the Superior Court (p. 103).

Appeal from Mayor's Court to Superior Courts at Westminster.

8. If either party appearing on the trial of any cause in which the sum sought to be recovered shall exceed the sum of twenty pounds shall be dissatisfied with the determination or direction of the Court in point of law, or upon the admission or rejection of any evidence, such party may appeal from the same to any one of the Superior Courts (two or more of the puisne judges or barons thereof shall sit out of term as a Court of Appeal for that purpose); provided, that such party shall, within two days after such determination or direction, give notice of appeal to the other party or his attorney, and also give security within such time or times as the Court shall direct, to be approved of by the Registrar of the Court (if the Judge shall so direct), for the costs of the appeal, whatever be the event of the appeal, and for the amount of the judgment, if he be the defendant and the appeal be dismissed: Provided nevertheless, that such security, so far as regards

Security to be given if Court so direct.

the amount of the judgment, shall not be required in any case where the Judge of the Court shall have ordered the party appealing to pay the amount of such judgment into the hands of the Registrar, and the same shall have been paid accordingly; and the said Court of Appeal may either order a new trial on such terms as it shall think fit, or may order judgment to be entered for either party, as the case may be, and may make such order with respect to the costs of the said appeal as such Court may think proper, and such orders shall be final (p. 93).

Appeal to be in form of case.

9. Such appeal shall be in the form of a case agreed on by both parties or their attorneys, and, if they cannot agree, the Judge of the Court, upon being applied to by them or their attorneys, shall settle the case and sign it, and such case shall be transmitted by the Registrar to the Rule Department of the Master's Office of the Court in which the appeal is to be brought (p. 93).

Rules to set aside or enter verdict, &c. may be moved before any of the Courts at Westminster if Mayor's Court shall grant leave.

10. If upon the trial of any issue the Judge shall grant leave to the plaintiff or defendant to move in any of the Superior Courts to set aside a verdict or a nonsuit, and to enter a verdict for the plaintiff or defendant, or to enter a nonsuit, as the case may be, or for a new trial, the party to whom such leave may have been given may apply by motion to such Superior Court, within such period of time after the trial as motions of the like kind shall from time to time be permitted to be made in such Superior Court, for a rule to show cause why such verdict or nonsuit should not be set aside, and a verdict entered for the plaintiff or defendant, or a nonsuit entered, or why a new trial should not be had, as the case may be, in such action, which Court is hereby authorised and empowered to grant or refuse such rule (which rule, when granted, shall operate as a stay of proceedings until the determination thereof), and afterwards to proceed to hear and determine the merits thereof, and to make such orders thereupon, and as to costs, as the same Court shall think proper; and in case such Court shall order a new trial to be had in any such action, the party obtaining such order shall deliver the same or any office copy thereof to the Registrar of the

said Court, and thereupon all the proceedings on the former verdict or nonsuit shall cease, and the action shall proceed to trial, according to the practice of the Court, in like manner as if no trial had been had therein; or in case the Court before whom such rule shall be heard shall order the same to be discharged, the party obtaining any such order may, upon delivering the same or an office copy thereof to the Registrar, be at liberty to proceed in any such action as if no such rule *nisi* had been obtained; and if a verdict be ordered to be entered for the plaintiff or defendant, or a nonsuit be ordered to be entered, as the case may be, judgment shall be entered accordingly (pp. 93—96, 97, 99).

Plaintiff recovering not exceeding £5 in action of contract and 40*s.* in action for a wrong, to have no costs, unless Judge at trial certify to entitle plaintiff to costs, or the Court make an order for plaintiff to have costs.

11. If in any action in covenant, debt, detinue, or assumpsit, not being an action for breach of promise of marriage, the plaintiff shall recover a sum not exceeding five pounds, or if in any action in trespass, trover, or case, not being an action for malicious prosecution, or for libel, or for slander, or for criminal conversation, or for seduction, the plaintiff shall recover a sum not exceeding forty shillings, the plaintiff shall have judgment to recover such sum only, and no costs, unless the Judge before whom such verdict shall be obtained shall certify on the back of the record that it appeared to him that there was a sufficient reason for bringing the said action in the Court, and in such case the plaintiff shall have judgment to recover his costs of suit; or if when there is no verdict the plaintiff shall make it appear to the satisfaction of the Court, on summons, that there was a sufficient reason for bringing the said action in the Court, in such case the Court may by rule or order direct that the plaintiff shall recover his costs, and thereupon the plaintiff shall have judgment to recover his costs accordingly (p. 131).

Where debt does not exceed £50, no plea to jurisdiction allowed in certain cases

12. Where the debt or damage claimed in any action shall not exceed the sum of fifty pounds, no plea to the jurisdiction shall be allowed, provided the defendant or one of the defendants shall dwell or carry on business within the city of London or the liberties thereof at the time of the action brought, or provided the defendant or one of the defendants shall have dwelt or carried on business at some

herein stated.

time within six months next before the time of the action brought, or if the cause of action, either wholly or in part, arose therein (pp. 7, 9, 10, 26—59, 63, 137, 145).

Court may order that the plaint may be served in any part of England or Wales.

13. The Court may, if it shall think fit, in any case when it shall satisfactorily appear by affidavit that the cause of action arises within the jurisdiction of the Court, order that the plaint may be served in any part of England or Wales; and the service of any plaint in pursuance of such order shall be as valid and effectual as if the same had been served within the jurisdiction of the Court, provided that a copy of such order shall be served at the time of the service of the plaint (pp. 6, 59).

All further proceedings to be had as usual.

14. In all cases where an order of the Court shall be made under the last preceding section, all the proceedings in the cause shall be had and taken as if the defendant had been duly served with the plaint within the jurisdiction (p. 72).

Objection to jurisdiction to be by plea.

15. No defendant shall be permitted to object to the jurisdiction of the Court in or by any proceeding whatsoever, except by plea (pp. 7, 8, 9, 12, 13, 15, 16, 25, 63, 137, 142).

Causes under £50 not to be removed except by Judge's order or on security.

16. No cause depending in the Mayor's Court in which the debt or damages sought to be recovered shall not exceed fifty pounds shall be removed by any defendant before judgment therein into any Superior Court, except in pursuance of a Judge's order, as hereinafter mentioned, unless the defendant, with two sufficient sureties, such as the Mayor's Court shall allow, shall first be bound to the plaintiff in the cause by recognizance, to be acknowledged in the Mayor's Court, in a sufficient sum for the payment of the debt or damages and costs in case judgment shall pass against the defendant in the Superior Court, or in case the cause shall be brought back by *procedendo* in the Mayor's Court: provided always, that any Judge of any of the Superior Courts may in the exercise of his discretion order a writ of *certiorari* to issue to remove any such cause depending in the Mayor's Court into any Superior Court without such recognizance as aforesaid, and such cause may be removed into such Superior Court accordingly (pp. 104, 105).

Writ to

17. No cause depending in the Mayor's Court shall be re-

moved before judgment therein into any Superior Court, unless the writ removing such cause shall have been lodged with the proper officer of the Court within one month after the service of the plaint, or unless such writ shall have been lodged with such officer before such action shall have been entered for trial according to the practice of the Mayor's Court (p. 104). remove causes to be lodged within one month after service of plaint.

18. No foreign attachment shall be removed from the Mayor's Court at any time after the same shall be set down for trial except by the express order of one of the Judges of the Superior Courts, and then upon such terms as to costs, bail, or payment of money into Court as such Judge on summons shall think fit; provided that a summons only, without any order of the Judge thereon, shall not stay the trial of the attachment in the Mayor's Court. Foreign attachment not to be removed after set down for trial, except by express directions of Judge upon terms.

19. No cause depending in the Court shall, before judgment be recovered, be removable into any of the Superior Courts (after plea pleaded), unless by leave of a Judge of one of the said Superior Courts in cases which shall appear to such Judge fit to be tried in one of the Superior Courts, and upon such terms, if any, as to payment of costs, giving security for debt and costs, or damages and costs, or such other terms as he shall think fit, upon summons (p. 106). No cause to be removed into Superior Court except by leave of Judge, and upon certain terms.

20. No suit commenced on the equity side of the Mayor's Court shall be removed from out of the said Court into Chancery without the special order of the Lord High Chancellor, the Master of the Rolls, or one of the Vice-Chancellors, upon application for that purpose made; and no cause shall be so removed from out of the said equity side of the Mayor's Court if the Judge to whom such application shall be made shall consider that the matter in question in the said suit is fit to be tried in the Mayor's Court; and the said Master of the Rolls shall have power from time to time to make rules and regulations respecting the removal of such suits as aforesaid (pp. 62, 63). No suit on equity side of Court to be removed unless by special direction of Judge.

21. In any action or other legal proceeding in the Court, the Court may, on application made for such purpose by either party, compel the opposite party to allow the party making the application to inspect all documents in the Power of Court to compel parties to allow inspection of

documents, and also copies to be taken.

custody or power or under the control of such opposite party relating to such action or other legal proceeding, and if necessary to take examined copies of the same, or to procure the same to be duly stamped in all cases in which, previous to the passing of this Act, a discovery might have been obtained by filing a Bill, or by any other proceeding in a Court of Equity at the instance of the party so making application as aforesaid to the Court.

Power to the Judge, within the jurisdiction to hear and determine motions, &c.

22. The Judge of the Court may at any time, within the jurisdiction of the Court, hear and grant applications for rules to show cause in arrest of judgment, or for judgment *non obstante veredicto*, or for a repleader, or for granting new trials, and for entering nonsuits and verdicts in causes pending in the Court (p. 128).

Power to Court to amend errors.

23. It shall be lawful for the Court at all times to amend all defects and errors in any proceeding, whether there is anything in writing to amend by or not, and whether the defect or error be that of the party applying to amend or not; and all such amendments as may be necessary for the purpose of determining in the existing suit the real question in controversy between the parties shall be so made; and all such amendments may be made with or without costs, or upon such terms as to the Court may seem fit (p. 125).

Depositions of witnesses may be taken.

24. The Court may in any action, upon the application of any of the parties thereto, order the examination on oath, upon interrogatories or otherwise, before the Registrar or other person or persons to be named in such order, of any witness or witnesses in any part of England and Wales, and by the same or any subsequent order or orders may give all such directions touching the time, place, and manner of examination, and all other matters and circumstances connected with such examination, as may appear reasonable and just.

As to compelling attendances of witnesses, production of documents, &c.

25. When any such order shall be made the Court may, in and by the first or any subsequent order, command the attendance of any person to be named in such order for the purpose of being examined, or the production of any writing or other document to be mentioned in such order, and may direct the attendance of any such person to be at his own place of abode

or elsewhere, if necessary or convenient so to do; and the party at whose instance such order may have been made and issued shall have all the same remedies against such person, in case of non-attendance, as he would have against any person for non-attendance in obedience to any writ of *subpœna ad testificandum* duly served according to the practice of the Court: provided that, in addition to the service of the order, an appointment of the time and place of attendance in obedience thereto, signed by the person or persons appointed to take the examination, or by one or more of such persons, shall be so served, together with or after the service of such order: provided also, that every person whose attendance shall be so required shall be entitled to the like conduct money, and payment for expenses and loss of time, as upon attendance at a trial: provided also, that no person shall be compelled to produce under any such order any writing or other document that he would not be compellable to produce at a trial of the cause.

Commission may be issued by Judge of the Court to examine witnesses abroad.

26. Upon the application of any of the parties to any action depending in the Court, the Court may order a commission to issue for the examination of witnesses upon oath at any place or places beyond the limits of England and Wales, by interrogatories or otherwise, and by the same or any subsequent order or orders may give all such directions touching the time, place, and manner of such examination, and all other matters and circumstances connected with such examination, as may appear reasonable and just.

Examination of prisoners.

27. Any sheriff, gaoler, or other officer having the custody of any prisoner may take such prisoner for examination at the place or places named in any such order by virtue of a writ of *habeas corpus* to be issued for that purpose, which writ shall and may be issued by any Judge under such circumstances and in such manner as such Judge may now by law issue the writ commonly called a writ of *habeas corpus ad testificandum*.

Examination of witnesses to be taken upon oath.

28. The person or persons authorised to take the examination of witnesses by any such rule, order, writ, or commission as herein mentioned shall and may take all such examinations

upon the oath of the witnesses, to be administered by the person so authorised; and if upon such oath any person making the same shall wilfully and corruptly give any false evidence, every person so offending shall be deemed and taken to be guilty of perjury, and shall and may be indicted and prosecuted for such offence in the county where such evidence shall be given, or in the county of Middlesex if the evidence be given out of England.

The person appointed for taking examinations may report to the Court.

29. The Registrar or any other person named in any such rule or order to take any examination in pursuance thereof may and he is hereby required to make, if need be, a special report to the Court touching such examination, and the conduct or absence of any witness or other person thereon or relating thereto; and the Court is hereby authorized to institute such proceedings and make such order and orders upon such report as justice may require, and as may be instituted and made in any case of contempt of court.

Costs of order and proceedings.

30. The costs of every rule or order to be made for the examination of witnesses by virtue of the provisions herein contained, and of the proceedings thereupon, shall be costs in the cause, unless otherwise directed either by the Judge of the Superior Court making such order or by the Court.

Restrictions as to reading depositions.

31. No examination or deposition to be taken by virtue of the provisions herein contained shall be read in evidence without the consent of the party against whom the same may be offered, unless it shall appear to the satisfaction of the Court that the examinant or deponent is not in England or Wales, or is dead, or unable from permanent sickness or other permanent infirmity to attend the trial, in all or any of which cases the examinations and depositions, certified under the hand of the commissioner, registrar, or other person taking the same, shall and may, without proof of the signature to such certificate, be received and read in evidence, saving all just exceptions.

Interpleader by defendant in action.

32. Upon application made by or on behalf of any defendant in any action in the Court, such application being made after declaration and before plea, by affidavit or other-

wise, showing that such defendant does not claim any interest in the subject matter of the suit, but that the right thereto is claimed or supposed to belong to some third party who has sued or is expected to sue for the same, and that such defendant does not in any manner collude with such third party, but is ready to bring into Court or to pay or dispose of the subject matter of the action in such a manner as the Court may order or direct, it shall be lawful for the registrar to issue a summons calling upon such third party to appear in Court, and to state the nature and particulars of his claim, and to maintain or relinquish his claim, which summons may be served upon such third party in any part of England or Wales; and upon such summons the Court may hear the allegations as well of such third party as of the plaintiff, and in the meantime stay the proceedings in such action, and finally order such third party to make himself defendant in the same or some other action, or to proceed to trial on one or more issue or issues, and also direct which of the parties shall be plaintiff or defendant on such trial, or, with the consent of the plaintiff and such third party, their counsel or attorneys, dispose of the merits of their claims, and determine the same in a summary manner, and make such rules and orders therein as to costs and all other matters as may appear to be just and reasonable (pp. 6, 60, 110).

Judgment and decision final.

33. The judgment in any action or issue as may be decreed by the Court, and the decision of the Court in a summary manner, shall be final and conclusive against the parties, and all persons claiming by, from, or under them (pp. 60, 111).

Claim of party not appearing barred.

34. If such third party shall not appear upon such summons to maintain or relinquish the claim, being duly served therewith, or shall neglect or refuse to comply with any rule or order to be made after appearance, it shall be lawful for the Court to declare such third party, and all persons claiming by, from, or under him, to be for ever barred from prosecuting his claim against the original defendant, his executors or administrators, saving nevertheless the right or claim of such third party against the plaintiff, and thereupon to make such order between such defendant and the plaintiff as

to costs and other matters as may appear just and reasonable (pp. 60, 110).

For relief of Serjeant-at-Mace in execution of process against goods.

35. When any claim shall be made to or in respect of any goods or chattels taken or intended to be taken in execution under the process of the Court, or to or in respect of the proceeds or value thereof, by any landlord for rent, or by any person not being the party against whom such process has issued, it shall be lawful to and for the Registrar, upon application of the Serjeant-at-Mace or any of his officers, made before or after the return of such process, and as well before as after any action brought against such Serjeant-at-Mace or any of his officers, to issue a summons calling before the Court as well the party issuing such process as the party making such claim, and thereupon any action which shall have been brought in any of the Superior Courts, or in any local or inferior Court of Record, in respect of such claim, shall be stayed; and the Court in which such action shall have been brought, or any Judge thereof, on proof of the issue of such summons, and that the goods and chattels were so taken in execution, may order the party bringing such action to pay the costs of all proceedings had upon such action after the issue of such summons; and the said Court shall thereupon exercise, for the adjustments of such claim, and the relief and protection of the said Serjeant-at-Mace or any of his officers, all or any of the powers and authorities hereinbefore contained, and make such rules and decisions as shall appear to be just, according to the circumstances of the case; and the costs of all such proceedings shall be in the discretion of the Court (p. 112).

Creditor obtaining judgment or order in respect of debt not exceeding £20 may summon the debtor before the Court.

36. *In every case where judgment shall have been signed in the Court against any person for any debt not exceeding twenty pounds, exclusive of costs, or where any person shall be indebted to any other in a sum not exceeding twenty pounds, by virtue of any judgment or order for the payment thereof, or by virtue of any order for the payment of any costs, the Court shall, upon the application of the creditor by any petition or note in writing, according to the form in Schedule (A) to this Act annexed, grant a summons, according to the form in*

Schedule (B) to this Act annexed, which said summons may be served upon the said debtor where he may reside or be; and if the debtor appear according to such summons, or at any adjournment thereof, he shall be interrogated, if the creditor think fit, touching the manner and time of his contracting his debt, the means or prospect of payment he then had, the property or means of payment he still hath or may have, and the disposal he may have made of any property since contracting such debt; and such creditor shall also be examined, if the Court or debtor shall think fit, touching his claim against such debtor; and it shall be lawful for the Court, then or at any future sitting of the Court, to make an order on the said debtor for the payment of his debt by instalments or otherwise; and in case the debtor shall not attend as required by the said summons or at any adjournment thereof, and shall not allege a sufficient excuse for not attending, or shall if attending refuse to disclose his property or his transactions respecting the same, or respecting the contracting of the debt, or shall not make answer thereof to the satisfaction of the Court, or shall appear to the Court to have been guilty of fraud in contracting the debt, or of having wilfully contracted it without reasonable prospect of being able to pay it, or of having concealed or made away with his property in order to defeat his creditors, or having made any vexatious defence to any action for the recovery of the debt, or if he appear to have the means of paying the same at the time of hearing, and shall not pay the same if the Court shall so order, or shall not pay the same by instalments at such time as the Court shall order, or as the Court shall have ordered, and without any further summons thereon, it shall be lawful for the Court to order such debtor to be committed for any time not exceeding forty days to the Debtors Prison within the City of London, which order of committal shall be according to one of the forms in Schedule (C) to this Act annexed.

Debtor or creditor may be examined.

37. *It shall be lawful for every person who shall be entitled to sign judgment in the Court where the amount of the debt recovered shall not exceed twenty pounds, exclusive of costs, to give, previously to signing such judgment, notice in the form in Schedule (D) to this Act annexed to the person against*

Power to issue order for payment on committal or signing judgment.

whom such judgment may be signed; and in case such notice shall be given, the Court shall, upon judgment being signed, have the like powers of hearing the parties and making such order for payment on committal as in the cases hereinbefore mentioned.

Power for officer to take person on order of committal, though out of jurisdiction of Court.

38. *When an order for commitment shall have been made under this Act, and the person against whom such order of commitment shall have issued shall be out of the jurisdiction of the Court, it shall be lawful for the officer charged with the execution of such order of commitment to take the person against whom such order shall have issued wherever such person shall reside or be.*

Registrar to have power to grant orders for payment or committal.

39. *In every case in which judgment shall have been obtained in the Court, or order made, for a sum not exceeding twenty pounds exclusive of costs, it shall be lawful for the Registrar of the Court, either during the sitting of the Court or out of Court, to hear the parties, and to grant an order for payment of the amount of the judgment or order and costs by instalments or otherwise, or to issue an order of committal as in the cases hereinbefore mentioned.*

Court to frame table of fees and costs.

40. *The Court may, from time to time, frame a table of fees upon the proceedings in the before-mentioned cases, and make an order for the payment thereof, in addition to the debt and costs already recovered* (a).

Registrar of Mayor's Court may hold Courts.

41. The Registrar of the Court may, in the absence of the Judge, hold the Court and transact all the business of the Court, except the trial of issues in law or in fact (p. 2).

Debtors Prison of City of London to be the prison of the Court.

42. The Debtors Prison for the City of London shall be the prison wherein all persons committed into custody under any process or proceeding of the Mayor's Court shall be confined; and the keeper for the time being of the said Debtors Prison shall and he is hereby required to receive and take into his custody every person who shall be committed or ordered to stand committed by the Court; and in case the keeper of the said prison shall neglect or refuse to receive or take into his custody any person committed by the Court, or shall before

(a) The five foregoing sections were virtually repealed and rendered inoperative by the Debtors Act, 1869. The same remark applies to Schedules (A), (B), and (C). See *ante*, p. 114.

the expiration of the time for which any person shall be committed to his custody discharge such person out of his custody, and wilfully suffer such person to go at large, without a warrant or order for that purpose in writing, signed by the plaintiff or by the Court (or by some other Court of competent authority), such keeper so offending in either of the said cases shall pay to the plaintiff at whose suit such person was in custody respectively the debt or debt and costs for which such person shall have been committed to the custody of such keeper, and also any sum not exceeding twenty pounds at the discretion of the Court.

If Recorder is absent Common Serjeant may preside.

43. In the absence of the Recorder the Common Serjeant for the time being of the City of London may preside as Judge in the Mayor's Court, and in case of illness or unavoidable absence of either the said Recorder or Common Serjeant it shall be lawful for them or either of them, or in case of their inability to make such appointment, for the Mayor, Aldermen, and Commons of the City of London in Common Council assembled, to appoint some other person who shall have practised as a Barrister-at-Law for at least seven years to act as a deputy of such Judge in the said Court during such illness or unavoidable absence; and it shall also be lawful for the said Recorder or Common Serjeant, or either of them, to appoint a deputy who shall have practised as a Barrister for at least seven years, to act for either of them in the said Court for any time or times not exceeding in the whole two months in any consecutive period of twelve months, and every deputy so appointed during the time for which he shall be so appointed shall have all the powers and privileges and perform all the duties of a Judge of the said Court (p. 2).

Judge to administer oath to authenticate documents.

44. It shall be lawful for any Judge of the Mayor's Court, either in or out of Court, to administer oaths and take declarations for the purpose of authenticating any documents which may be required to be produced in any foreign country or in any place out of the jurisdiction of the Court (p. 129).

Judge may make and alter rules to be con-

45. It shall be lawful for the Court from time to time to make, alter, and revoke rules, orders, and regulations required for and in respect of the offices of the Mayor's Court, and

firmed by Judges of Superior Court.

the nature, duties, fees, and emoluments attaching to the respective officers, and from time to time to make, alter, and revoke rules for regulating the practice and pleading, and the taking of oral evidence in the Court, and the fees to be taken on the proceedings in the said Court, and the forms relating thereto, both in law and equity, as shall from time to time to it seem necessary and proper: Provided always, that such rules and forms and any order for revoking or altering the same, shall be signed by the Judge of the said Court, and that no such rules, orders, or forms shall be of any force until they shall have been allowed and confirmed by three of the Judges of the Superior Courts; and it shall be lawful for the Judges of the Superior Courts from time to time to make such rules, orders, and regulations as they may think fit for carrying into execution the provisions of this Act relative to the removal of causes from the Mayor's Court to the Superior Courts (p. 90).

Power to her Majesty to direct provisions of any Act for amendment of the law, and rules framed in pursuance thereof to apply to the Mayor's Court.

46. It shall be lawful for her Majesty from time to time, by an Order in Council, to direct that all or any part of the provisions of any Act for the amendment of the law now passed or hereafter to be passed, and also all or any of the rules and regulations made in pursuance thereof, shall extend to and apply to the Mayor's Court, and within one month after such order shall have been made and published in the *London Gazette* such provisions and rules respectively, or parts thereof (and the forms necessary in respect thereof), shall extend and apply in manner directed by such order; and any such order may be in like manner altered and annulled; and in and by any such order her Majesty may direct by whom any such powers or duties incident to the said provisions, applied under the said several Acts and rules in respect thereof, shall and may be exercised with respect to the matters in such Court, and may make any order, regulation, or form which may be deemed requisite for carrying into operation in such Court the provisions so applied (pp. 90, 121).

Power to Judge to direct attach-

47. In any case where a garnishee may appear before a Judge under the "Common Law Procedure Act, 1854," and dispute his liability, the Judge may order that an issue shall

be tried in the said Mayor's Court in such manner and form as the Judge shall direct, and such proceedings shall be had therein as if the same question had been tried in the Superior Courts. ment to be tried in Mayor's Court.

48. In every case where final judgment shall have been obtained in the Mayor's Court, and also in every case where any rule or order shall have been made by the Court, whereby any sum of money, or any costs, charges, or expenses shall be payable to any person, any writ of execution upon such judgment, or any rule or order so made by the Court, shall be sealed by the sealer of writs of any of the Superior Courts upon a precipe of the same being lodged with him, together with an affidavit verifying the judgment or order, and that the same remains unreversed and unsatisfied, and immediately thereupon such writ of excution and such judgment, rule, or order shall become and be of the same force, charge, and effect as a writ of execution or judgment recovered in or a rule or order made by such Superior Court, and all the reasonable costs and charges attendant upon such sealing shall be recovered in like manner as if the same were part of such judgment, or rule, or order: Provided always, that no such judgment, or rule, or order when so removed as aforesaid shall affect any lands, tenements, or hereditaments as to purchasers, mortgagees, or creditors, any further than the same would have done if the same had remained a judgment, rule, or order of the Mayor's Court, unless and until a writ of execution thereon shall be actually put into the hands of the sheriff or other officer appointed to execute the same (pp. 6, 60, 108). For removal of judgments into Superior Court.

49. If any juror having been duly summoned shall not attend in pursuance of such summons, or after his appearance shall wilfully withdraw himself from the presence of the Court, the Court shall impose such fine upon every juror so making default, unless some reasonable excuse shall be proved to the satisfaction of the Court, as the Court shall think meet, not exceeding five pounds; and in case of non-payment of such fine according to the directions of the Court, the same may be levied in such manner as is pro- Fines on jurors for non-attendance.

vided for the levying of fines imposed upon common jurors for any similar default under the provisions of 5 & 6 Will. 4, c. 76, s. 121 (p. 4).

Court may issue process to compel the attendance of witnesses, although not within its jurisdiction.

50. If in any action or suit now or at any time hereafter depending in the Court it shall appear to the Court, or, if the Court is not sitting, to the Judge thereof, that it is proper to compel the personal attendance at any trial of any witness who may not be within the jurisdiction of the Court, it shall be lawful for the Court or Judge, if in their or his discretion it shall so seem fit, to order that a writ called a writ of *subpœna ad testificandum*, or of *subpœna duces tecum*, or warrant of citation, shall issue in special form, commanding such witness to attend such trial or process wherever he shall be within the United Kingdom, and the service of any such writ or process in any part of the United Kingdom shall be valid and effectual.

Judge may by consent try questions of fact.

51. The parties in any cause may, by consent in writing signed by them or by their respective attorneys, leave the decision of any issue of fact to the Court, provided that the Court shall in their or his discretion think fit to allow such trial, or provided the Judges of the Superior Courts shall, in pursuance of the power vested in them by law for such purpose, make any general rule or order dispensing with such allowance, either in all cases or in any particular class or classes of cases to be defined by such rule or order; and such issue of fact may thereupon be tried and determined, and damages awarded where necessary, in open Court by the Judge who might otherwise have presided at the trial thereof by jury; and the verdict of such Judge shall be of the same effect as the verdict of a jury, save that it shall not be questioned upon the ground of being against the weight of evidence; and the proceedings upon and after such trial as to the power of the Court or Judge, the evidence, and otherwise, shall be the same as in the case of trial by jury (p. 88).

No cause to be removed except by *certiorari*

52. No cause shall be removable from the Court otherwise than by a writ of *certiorari*, or by the order of a Judge of one of the Superior Courts, or by the special order of the Lord High Chancellor, the Master of the Rolls, or one of

the Vice-Chancellors, and every writ of *certiorari* shall be made returnable immediately, whether in or out of term (p. 106). or Judge's order.

53. Every person who is legally entitled to any franchise or office in either of the Sheriffs' Courts whose office shall be abolished, or whose office shall be deprived of any emolument by this Act, shall be entited to make a claim for compensation to the Mayor, Aldermen, and Commons of the City of London in Common Council assembled within six months after the commencement of this Act; and it shall be lawful for the said Mayor, Aldermen, and Commons, in such manner as they shall see fit, to inquire what was the nature of the office, and what was the tenure thereof, and what were the lawful fees and emoluments in respect of which such compensation shall be claimed; and the said Mayor, Aldermen, and Commons shall in each case award such gross or yearly sum, and for such time as they shall think just under the circumstances of each case, subject to the approval of the Lords Commissioners of her Majesty's Treasury; and all compensation when so awarded shall be paid by the said Mayor, Aldermen and Commons out of the funds of the said City. Compensation to officers of abolished Court, &c.

54. In this Act the following words and expressions shall have the several meanings hereby assigned to them (unless there be something in the subject or context repugnant to such construction); that is to say, Interpretation of terms.

The word "Person" shall include corporations, whether aggregate or sole:

The words "the Mayor's Court," or "the Court," shall mean the Court of our lady the Queen holden before the Lord Mayor and Aldermen in the Chamber of the Guildhall of the City of London:

The words "the Judge" shall mean the Judge of the Mayor's Court, or the person authorized to sit or sitting as Judge therein:

The words "the Superior Courts" shall mean her Majesty's Superior Courts of Common Law at Westminster:

The words "the Registrar" shall mean the Registrar of the Mayor's Court, and shall include the Deputy of

such Registrar, or the person appointed to perform or performing the duties of Registrar.

Expenses of Act.

55. The costs of and relating to the passing of this Act shall be paid out of the fees of the Court.

SCHEDULES REFERRED TO BY THE FOREGOING ACT (*b*)

SCHEDULE (A.)

To the Judges of the Mayor's Court of the City of London.

Be pleased to summon of to answer touching the

Debt, £ debt due to by the

Costs - of the Court of Mayor and Aldermen of the

——— said City on behalf.

£ Dated this day of

in the year of our Lord one thousand eight hundred and .

of

in the of

Judgment signed or Order dated. the day of one thousand eight hundred and }

Attorney for the said

SCHEDULE (B.)

In the Mayor's Court, London.

You are hereby required to appear before the Court of our lady the Queen holden before the Mayor and Aldermen of the City of London at the Guildhall of the said City on

(*b*) See note on p. 162.

Debt, £
Costs -
£

the day of at of the clock in the forenoon of the same day precisely, touching the not having paid to of in the of the sum of recovered in a certain of the said Court.

Dated this day of in the year of our Lord one thousand eight hundred and .

By order of the Court.

To of in the City of London, (*or* County of)

SCHEDULE (C.)

In the Mayor's Court, London.

At a Court holden the day of in the year of our Lord one thousand eight hundred and .

Debt, £
Costs -
£

WHEREAS at the time of the granting the summons hereinafter mentioned was and now is indebted to in the sum of pounds shillings and pence, and no more, besides costs of suit amounting to pounds shillings and pence, by virtue of a of this Court on the day of in the year of our Lord one thousand eight hundred and : And whereas the said . to enforce the payment of such debt did on the day of in this present year obtain a summons from this Court, by which summons the said was

required to appear before this Court at the Guildhall aforesaid this day: And whereas the said hath been duly served with the said summons, but he hath not attended as required by the said summons, and hath not alleged a sufficient excuse for not attending:

Now it is ordered, that the said shall be committed for the term of days to the Debtors Prison for the City of London.

By the Court.

To

One of the Serjeants-at-Mace of this Court,

his deputy, and to the keeper of the Debtors Prison (above mentioned) for the City of London.

In the Mayor's Court, London.

At a Court holden the day of in the year of our Lord one thousand eight hundred and .

Debt, £ Costs - £

WHEREAS now is indebted to in the sum of pounds shillings and pence, and no more, besides costs of suit amounting to pounds shillings and pence, by virtue of a of this Court on the day of in the year of our Lord one thousand eight hundred and : And whereas the said to enforce the payment of such debt did on the day of in this present year obtain a summons from this Court, by which summons the said was required to appear before this Court at the Guildhall aforesaid this day: And whereas the said hath been

duly served with the said summons, and hath attended as required by the said summons: And whereas the said

*or has refused to disclose his property [*or as the case may be*]:

appears to have [the means of paying such debt but hath not paid the same at such times as this Court hath heretofore ordered]:*

Now it is ordered, that the said shall be committed for the term of days to the Debtors Prison of the City of London.

By the Court.

To
One of the Serjeants-at-Mace of this Court,

his deputy, and to the keeper of the Debtors Prison (above mentioned) for the City of London.

SCHEDULE (D.)

In the Mayor's Court, London.

against

Sir,

TAKE notice, that I shall attend at the offices of the Court situate on at o'clock to sign judgment against you herein. And further take notice, I shall at the same time apply for an order for the payment by you of the said debt by instalments, or such other order as the Court may think fit to make herein.

Yours, &c.,

Plaintiff's Attorney.

To Mr.
the above-named defendant.

(B).

STATUTORY ENACTMENTS EXTENDED AND APPLIED TO THE MAYOR'S COURT BY AN ORDER OF THE QUEEN IN COUNCIL, DATED NOV. 17, 1863.

1. C. L. P. Act, 1852; save as to the following sections:—1, 2, 4—6, 8—15, 18—31, 58, 59, 62, 63, 72, 73, 81—86, 90, 92, 93, 97—116, 120—122, 127, 202, 217, 222, and part of sections 69 and 143.
2. C. L. P. Act, 1854; save as to the following sections:—2, 35, 36—40, 42, 43, 76, 77, 95, 99, 100—102, 104—107.
3. C. L. P. Act, 1860; save as to the following sections:—22—27, 40—46.
4. Bills of Exchange Act, 1855 (18 & 19 Vict. c. 67); save as to the 8th, 9th, and 10th sections.
5. Law of Foreign Countries Act, 1861 (22 & 23 Vict. c. 63); save as to the 3rd and 4th sections.

N.B. In reading the above statutory provisions as incorporated with the M. C. L. P. Act, 1857, and applying to the Mayor's Court, the following necessary alterations must be understood: For "Writ" or "Writ of Summons" read "Plaint" [except as to the action of ejectment, which in the Mayor's Court, as in the Superior Courts, is commenced by writ]. For "the Court," or "a Judge" read "the Mayor's Court;" for "Master" read "Registrar" or "Deputy Registrar;" and for "Sheriff" or "Bailiff" read "Serjeant-at-Mace."

(C).

STATUTORY ENACTMENTS AFFECTING APPEALS FROM THE MAYOR'S COURT.

1. *Supreme Court of Judicature Act*, 1873.

Section 45. All appeals from Petty or Quarter Sessions, from a County Court, *or from any other Inferior Court*, which might before the passing of this Act have been brought to any Court or Judge whose jurisdiction is transferred to the High Court of Justice, may be heard and determined by Divisional Courts of the said High Court of Justice consisting respectively of such of the Judges thereof as may, from time to time, be assigned for that purpose pursuant to Rules of Court, or subject to Rules of Court as may be so assigned according to arrangements made for the purpose by the Judges of the said High Court. The determination of *such appeals* respectively by such Divisional Courts shall be final, unless special leave to appeal from the same to the Court of Appeal shall be given by the Divisional Court by which *any such appeal* from an Inferior Court shall have been heard (pp. 98, 99).

2. *Supreme Court of Judicature Act*, 1875.

Section 15. It shall be lawful for her Majesty, from time to time, by Order in Council, to direct that the enactments relating to appeals from County Courts shall apply to any other inferior Court of record; and those enactments, subject to any exceptions, conditions, and limitations contained in the Order, shall apply accordingly as from the date mentioned in the Order (p. 101).

3. *Appellate Jurisdiction Act*, 1876 (39 & 40 Vict. c. 59).

Section 20. Where, by Act of Parliament, it is provided that the decision of any Court or Judge, the jurisdiction of which Court or Judge is transferred to the High Court of Justice, is *to be final, an appeal shall not lie in any such case* from the decision of the High Court of Justice, *or of any Judge thereof*, to her Majesty's Court of Appeal (p. 94, note).

(D).

STATUTORY ENACTMENTS AFFECTING THE JURISDICTION OF THE MAYOR'S COURT.

Supreme Court of Judicature Act, 1873.

PART VI.

Jurisdiction of Inferior Courts.

Power by Order in Council to confer jurisdiction on Inferior Courts.

Section 88. It shall be lawful for her Majesty from time to time by Order in Council to confer on any Inferior Court of civil jurisdiction the same jurisdiction in Equity and in Admiralty, respectively, as any County Court now has, or may hereafter have; and such jurisdiction, if and when conferred, shall be exercised in the manner by this Act directed (p. 61).

Powers of Inferior Courts having Equity and Admiralty jurisdiction.

Section 89. Every inferior Court which now has or which may after the passing of this Act have jurisdiction in Equity, or at Law and in Equity, and in Admiralty respectively, shall, as regards all causes of action within its jurisdiction for the time being, have power to grant, and shall grant in any proceeding before such Court, such relief, redress, or remedy, or combination of remedies, either absolute or conditional, and shall in every such proceeding give such and the like effect to every ground of defence or counterclaim, equitable or legal (subject to the provision next hereinafter contained), in as full and ample a manner as might and ought to be done in the like case by the High Court of Justice (pp. 61, 65, 67, 81).

Counterclaims in Inferior Courts, and transfers therefrom.

Section 90. Where in any proceeding before any such Inferior Court any defence or counterclaim of the defendant involves matter beyond the jurisdiction of the Court, such defence or counterclaim shall not affect the competence or the duty of the Court to dispose of the whole matter in controversy so far as relates to the demand of the plaintiff and the defence thereto, but no relief exceeding that which the

Court has jurisdiction to administer shall be given to the defendant upon any such counterclaim: Provided always, that in such case it shall be lawful for the High Court, or any Division or Judge thereof, if it shall be thought fit, on the application of any party to the proceeding, to order that the whole proceeding be transferred from such Inferior Court to the High Court, or to any Division thereof; and in such case the record in such proceeding shall be transmitted by the Registrar, or other proper officer, of the Inferior Court to the said High Court; and the same shall thenceforth be continued and prosecuted in the said High Court as if it had been originally commenced therein (pp. 66, 67, 69, 107).

Rules of law to apply to Inferior Courts.

Section 91. The several rules of law enacted and declared by this Act shall be in force and receive effect *in all Courts whatsoever in England*, so far as the matters to which such rules relate shall be respectively cognizable by such Courts (pp. 66, 135).

(E).

RULES FOR JUDGMENT SUMMONSES IN THE MAYOR'S COURT.

It is ordered that, on and after the 1st day of January, 1870, the following Rules shall be in force for regulating the practice in respect of the powers vested in the Mayor's Court of London by the first part of the Debtors' Act, 1869.

1. Any judgment debtor may be summoned at the request of a judgment creditor, which request shall be in form No. I.
2. The summons shall be in form No. II.
3. The service of every summons, whenever it is practicable, shall be personal service; but if it appear to the Judge or his Deputy that reasonable efforts have been made to effect personal service, and either that the summons has come to the knowledge of the debtor, or that he wilfully evades service, an order may be made as if personal service had been effected,

upon such terms as the Judge or his Deputy may think fit.

4. The order shall be in form No. III.
5. The committal shall be in form No. IV.
6. Except by special leave of the Judge or his Deputy, no commitment for non-payment of any sum shall be issued without notice being given or sent to the debtor that such commitment has been ordered, but such notice need only be sent to the debtor by post or otherwise, without personal service.
7. Proof of such notice having been sent may be made by affidavit, and such affidavit must set out the particulars of how and when such notice has been sent.
8. Proof of the means of the debtor may be made orally or by affidavit, or if it appears to the Judge or his Deputy, either before or at the hearing or any adjournment thereof, that a *vivâ voce* examination of the debtor or of any other person, or the production of any book or document, is expedient or necessary, an order may be made commanding the attendance of such person, or the production of such book or document. The disobedience to any such order shall be deemed a contempt of Court, and punishable accordingly.
9. The hearing of any summons may be adjourned, if the Judge or his Deputy shall think fit, to a day and time to be named, and if the debtor shall have appeared on the day on which it is adjourned, no further notice thereof shall be required of such adjournment; but if the debtor shall not have appeared, then notice of such adjournment shall be sent to the debtor.
10. Upon every commitment shall appear the amount of the debt or the instalments due, and for the non-payment of which the debtor is committed.
11. Upon payment of the sum mentioned in the commitment, as in Rule 10, together with the fees of the Court and Serjeant-at-Mace, the debtor shall be entitled to his discharge.

12. The Governor of the Debtors' Prison may receive the sum mentioned in the commitment, together with the fees, as in Rules 10 and 11, and thereupon, or upon certificate of the Serjeant-at-Mace, or his Deputy, that the same has been satisfied, may discharge the debtor.
13. No commitment shall be in force concurrently with a writ of *fi. fa.* for the same debt.
14. The judgment record or order upon which the debtor is summoned shall be produced in Court at the hearing of any summons.
15. The costs of the summons and commitment and of any writ of *fi. fa.* issued on the judgment or of any previous summons or summonses, not served by reason of the debtor having evaded service, shall be in the discretion of the Court, and ordered at the hearing of the case.
16. Any witness may be summoned to prove the means of the debtor, or for the production of any book or document, by a summons in the form No. V.
17. Such summons shall be served three clear days before the hearing of the case.

In ordinary cases the following costs will be allowed :—

When the Debt, exclusive of all Costs, is

	Under £10.	£10 and under £20.	£20 and upwards.
Application for Summons, and paid	—	0 2 6	0 2 6
Copy and Service of Summons	0 2 6	0 2 6	0 2 6
Attending the Hearing	0 3 4	0 3 4	0 6 8
Copy and Service of Order where Debtor does not appear	0 1 0	0 3 0	0 4 0
If Commitment ordered where Debtor does not appear, Notice of Commitment and Affidavit	0 2 0	0 4 0	0 5 0

NOTE.—The forms referred to in the foregoing Rules can be procured at the Office of the Court.

(F.)

35 & 36 Vict. c. 86.

THE BOROUGH AND LOCAL COURTS OF RECORD ACT, 1872.

By an Act (passed August 10, 1872) *to amend the law relating to Borough and other Local Courts of Record in England and Wales* some of the provisions of the M. C. L. P. Act were modified as follows:—Section 4 enabled two or more Courts to be held at the same time, either for trial of issues or for ordinary proceedings. Section 5 enabled affidavits sworn before any Commissioner or other authorized person to be used in the Mayor's Court without verification of the signature (*ante*, p. 128). Section 6 enabled the Mayor's Court to send writs of execution, in all cases where there is a judgment or order for not more than £20, to any County Court, within the jurisdiction of which the defendant may possess any goods or chattels, for execution by the High Bailiff of such County Court.

The only other section of the Act itself that touched the Mayor's Court was the 7th, which empowered the Judge to appoint a Deputy subject to the conditions imposed by an Order in Council. Those conditions (as laid down in an Order in Council, dated June 26, 1873) were that the Deputy Judge was to be appointed under an instrument under the hand of the Judge specifying the duties he was to perform, the reason for appointing him, and the time for which he was appointed. The appointment was to have the approval of the Lord Chancellor in writing, and also of the Mayor, Aldermen and Commons of the City of London under the hand of their Town Clerk.

By another Order in Council of the same date several clauses of the Schedule to the above Act were extended and applied to the Mayor's Court, subject to certain alterations and modifications. This extension was guarded by a proviso that the powers given by clause 2 (of Schedule to Act) should in every case be exercised either by the Judge himself or by a Deputy or Assistant Judge *duly appointed*, under the 7th section of the Act or otherwise, such Deputy, &c., being a

barrister of not less than seven years' standing. It was further provided and ordered that the powers and duties incident to the provisions extended to the Mayor's Court and exercisable by "the Court or a Judge" should and might, with regard to matters in that Court, be exercised by the Judge of the Mayor's Court, or (save as aforesaid) by his *duly appointed* Deputy. The following is a summary of the clauses of the Schedule directed to apply to this Court:—

Clause 1 explains the construction of the words "Court," "Judge," "Superior Courts," as used in the Schedule.

Clause 2 enables the Judge to hear motions and make orders out of Court, and *outside the limits of the local jurisdiction.* (Extension of s. 22 of M. C. L. P. Act, 1857).

Clause 9 provides that wherever a final judgment is obtained for £20, exclusive of costs, or wherever an order is made for payment of £20, on such judgment or order duly signed and sealed being produced to any Judge of the Superior Courts, he may direct the same (or a copy thereof verified by affidavit) to be filed with the clerk of the judgments of one of the Superior Courts, whereupon the same becomes of the same effect for all purposes as a judgment or order of such Superior Court.

Clause 10 empowers a Judge of the Superior Courts, on application by any party to "any such action" depending in the Mayor's Court, to order a commission to issue for the examination of witnesses at any place or places beyond the limits of England and Wales.

Clause 11 gives the Mayor's Court Judge power to order a nonsuit whenever he is not satisfied by the evidence that either plaintiff or defendant is entitled to judgment, and also to order a new trial in every case on such terms as he shall think reasonable, and to stay proceedings in the meantime.

Clause 12 prohibits the removal before judgment of any action entered in the Mayor's Court into a Superior Court by any writ or process except by leave of a Superior Court Judge, which he may give where he thinks the case fit to be tried in a Superior Court, the terms being in his discretion. (Omits the term "after plea pleaded" contained in s. 19 of M. C. L. P. Act, 1857).

(G.)

SCALE OF COSTS IN THE MAYOR'S COURT.

(1.) Plaintiff's Costs.

Action.	Under 10*l.*	Out of pocket.	10*l.* and under 20*l.*	Out of pocket.	20*l.* and above.	Out of pocket.
	s. *d.*	*s.* *d.*	*s.* *d.*	*s.* *d.*	*s.* *d.*	*s.* *d.*
Letter - - -	3 0	—	3 6	—	3 6	—
Instructions for action	3 0	—	3 4	—	6 8	—
Action and paid -	10 0	4 0	15 6	4 6	17 6	5 0
Copy and service (*a*) -	2 6	—	2 6	—	2 6	—
	18 6	—	24 10	—	30 2	—

Service of Plaint out of the Jurisdiction.

In addition to the ordinary charges—

Affidavit, &c. - -	—	1 0	4 0	1 0	6 0	2 0
Copy order to serve -	—	—	1 0	—	1 0	—

The above costs are allowed for service within three miles of the General Post Office, but where defendant resides beyond that distance, extra costs will be allowed according to the distance of the residence of the defendant, or for agent's charges. Under £10, the 1*s.* paid upon the affidavit only is allowed. The costs are marked at the time of the grant of the order for service of the plaint out of the jurisdiction.

Substituted Service of Plaint.						
Affidavit - - -	4 0	1 0	6 0	1 0	7 0	1 0
Extra copy, action and paid - - -	1 0	0 6	1 0	0 6	1 0	0 6
Attending for order, including service and paid - - -	—	—	5 0	1 0	7 0	2 0
	5 0	—	12 0	—	15 0	—

Under £10 no allowance is made for attending for the order.

(*a*) 3*s.* 4*d.* extra is allowed for every additional defendant.

Where verdict is under £10, the plaintiff cannot recover a greater amount of costs than he would have been allowed if the action had been brought in a County Court, unless the Judge certify. (*Ante*, p. 133.)

Costs to Trial. In addition to costs above.	Under 20*l.*		Out of pocket.		20*l.* and above.		Out of pocket.	
	s.	*d.*	*s.*	*d.*	*s.*	*d.*	*s.*	*d.*
*Instructions to proceed	3	4	—		6	8	—	
*Copy declaration and demand of plea	3	0	—		4	0	—	
Instructions for brief (*a*)	6	8	—		13	4	—	
Brief: (*a*)								
In ordinary cases	20	0						
Drawing per folio	1	0	—		1	0	—	
Copy per folio	0	4	—		0	4	—	
Entering plea on record, joinder of issue, demurrer, &c., and notice	4	0	—		6	0	—	
If special, above three folios, per folio	0	4	—		0	4	—	
Entering cause for trial and notice and summoning jury	9	0	4	0	12	0	5	0
*Notice to inspect and admit, and notice to produce, each, ordinary	4	0	—		5	0	—	
Attending inspection	3	4	—		6	8	—	
Affidavit of notice to produce, &c.	4	0	1	0	5	0	1	0
Subpœna, *vide* writs.								
Searching of cause in paper	3	4	—		3	4	—	
Fee to Counsel, *vide* Fees to Counsel.								
Attending Counsel (*a*)	3	4	—		6	8	—	
*Attending Court	3	4	—		6	8	—	
Entering verdict on record and paid	6	0	3	0	8	0	5	0
Notice of taxing	2	0	—		3	0	—	
*Bill of costs and copy	4	0	—		6	0	—	
Signing judgment and paid	7	0	4	0	12	0	5	0
Attending taxing and paid	4	4	1	0	8	8	2	0
*Letters, &c.	3	4	—		6	8	—	
Marking cause a remanet	3	0	3	0	4	0	4	0
Affidavit of increase and copy (*b*)	6	0	1	0	6	0	1	0

All items marked thus (*) are allowed according to the merits of the case; the amounts entered are allowed in ordinary cases.

(*a*) In special cases discretionary.
(*b*) An affidavit of increase is not required or allowed unless called for by the opposite party.

JUDGMENT IN DEFAULT OF APPEARANCE.	Under 10*l.*	Out of pocket.	10*l.* and under 20*l.*	Out of pocket.	20*l.* and above.	Out of pocket.
	s. *d.*	*s.* *d.*	*s.* *d.*	*s.* *d.*	*s.* *d.*	*s.* *d.*
Costs as on pp. 180, 181	18 6	—	24 10	—	30 2	—
Instructions to proceed	—	—	3 4	—	6 8	—
Affidavit of service -	5 0	1 0	5 0	1 0	6 0	1 0
Judgment - - -	5 6	2 6	6 6	3 6	11 0	4 0
	29 0	—	39 8	—	53 10	—

The above costs are marked without taxation. If extra costs have been incurred within the eight days allowed for appearance (as for particulars of demand and the like), the plaintiff must tax his costs upon notice.

JUDGMENT FOR WANT OF A PLEA.	Under 10*l.*	Out of pocket.	10*l.* and under 20*l.*	Out of pocket.	20*l.* and above.	Out of pocket.
	s. *d.*	*s.* *d.*	*s.* *d.*	*s.* *d.*	*s.* *d.*	*s.* *d.*
Costs as on pp. 180, 181	18 6	—	24 10	—	30 2	—
*Instructions to proceed	—	—	3 4	—	6 8	—
*Copy declaration to deliver and demand of plea - - -	3 0	—	3 0	—	4 0	—
Judgment - - -	6 0	3 0	7 0	4 0	12 0	5 0
Bill of costs - -	2 0	—	3 0	—	4 0	—
Notice of taxing - -	2 0	—	2 0	—	3 0	—
Attending taxing and paid - - -	3 4	1 0	4 4	1 0	5 4	2 0
*Letters, &c - -	—	—	—	—	—	—

INCIDENTAL TO RULE FOR PAYMENT OF DEBT BY INSTALMENTS AND JUDGMENT.	Under 20*l.*	Out of pocket.	20*l.* and above.	Out of pocket.
	s. *d.*	*s.* *d.*	*s.* *d.*	*s.* *d.*
Attendances upon defendant on terms of settlement, and drawing consent.	6 8	—	13 4	—
Drawing up rule and service - -	4 4	1 0	5 4	2 0
If costs not agreed, add—				
Notice of taxing - - - -	2 0	—	3 0	—
Attending taxing and paid - -	4 4	1 0	5 4	2 0
When plaintiff is entitled to immediate judgment by his rule, in lieu of the last item charge—				

	Under 20*l.*		Out of pocket.		20*l.* and above.		Out of pocket.	
	s.	*d.*	*s.*	*d.*	*s.*	*d.*	*s.*	*d.*
Attending taxing and signing judgment	8	0	5	0	13	0	6	0
Instructions to proceed to judgment on account of non-payment of instalments by defendant	2	6	—		3	4	—	
Signing judgment, marked without taxation	7	0	4	0	12	0	5	0

PLEADINGS.	Under £20. *s.*	*d.*	£20 and above. *s.*	*d.*
If the declaration exceeds the allowance of four folios calculated in the costs of the plaint, 1*s.* per folio, drawing, engrossing, and copy to deliver				
One or more pleas of three folios or under, exclusive of instructions but inclusive of engrossing	4	0	5	0
If above three folios, for every folio 1*s.*				
Attending pleader	3	4	3	4
Paid, *vide* fees to Counsel.				

No special declaration is allowed for in cases where the *concessit solvere* will apply.

FEES TO COUNSEL.				
In ordinary cases, including clerk	23	6	44	6
Refresher	13	0	23	6

In special cases extra fees are allowed, as also more than one Counsel, according to the merits of the case. Refreshers are allowed where a cause is made a *remanet* from one Sitting of the Court to another, but not where it is merely adjourned. Pleaders' fees, consultations, and advice on evidence are only allowed in special cases.

PAYING MONEY IN AND OUT OF COURT.	Under 50*l.*		Out of pocket.		Above 50*l.*		Out of pocket.	
	s.	*d.*	*s.*	*d.*	*s.*	*d.*	*s.*	*d.*
Attending - - - - - -	3	4	—		6	8	—	
Paid - - under £5	1	0						
£5 and under 10	1	6						
10 „ „ 20	2	0						
20 „ „ 50	2	6						
50 „ upwards	5	0						
Replication taking money out of Court in satisfaction - - - -	4	0	—		5	0	—	
Signing judgment in case of default being made in payment of the costs taxed marked without taxation -	7	0	4	0	12	0	5	0

WITNESSES.	*s.*	*d.*		*s.*	*d.*
Labourers or Journeymen, Police Constables or Inspectors - - - - - -	3	6	to	7	0
Master Tradesmen, Clerks, &c. - - -	5	0	to	10	6
Professional Men, Auctioneers, Engineers, Notaries, Gentlemen, Esquires, Bankers, Merchants - - - - - - -	10	6	to	21	0

Travelling expenses of witnesses will be allowed according to the sums reasonably and actually paid, but in no case shall exceed 1*s.* per mile one way.

No allowance is, in any case, made to plaintiff or defendant, except for travelling expenses.

WRITS.	Under 10*l.*		Out of pocket.		10*l.* and under 20*l.*		Out of pocket.		20*l.* and above.		Out of pocket.	
	s.	*d.*	*s.*	*d.*	*s.*	*d.*	*s.*	*d.*	*s.*	*d.*	*s.*	*d.*
Fi. Fa. - - -	5	0	1	0	5	0	1	0	7	0	2	0
Spa. ad test. - -	5	0	1	0	5	0	1	0	5	0	1	0
Spa. duces tecum -	6	0	1	0	6	0	1	0	6	0	1	0

Application and order for spa for service out of jurisdiction. } Same allowance as upon an application for service of plaint out of the jurisdiction.

Service of spa. within three miles of the General Post Office -	2	6	—	2	6	—	2	6	—

If beyond 3 miles - { Same allowance as upon a plaint for service out of the jurisdiction.

Miscellaneous.	Under 20*l.*		Out of pocket.		20*l.* and above.		Out of pocket.	
	s.	*d.*	*s.*	*d.*	*s.*	*d.*	*s.*	*d.*
Paid for certificate and oath to affidavit for removal of judgment	—		2	0	—		3	0
Notice of application for order for particulars of demand, set off, time to deliver pleadings and the like	2	0	—		3	0	—	
Attendance on each application, including order and service	4	4	1	0	4	4	1	0
Drawing particulars of demand or set off and copy if under 3 folios	4	0	—		5	0	—	

If above 3 folios—

Drawing, per folio 8d., copying, per folio 4d.

	Under 20*l.*		Out of pocket.		20*l.* and above.		Out of pocket.	
	s.	*d.*	*s.*	*d.*	*s.*	*d.*	*s.*	*d.*
Demand of declaration or other pleading	2	0	—		3	0	—	
Attendances in general matters (*a*)	3	4	—		3	4	—	
Copy notices, &c., to annex to brief or record, each	1	0	—		1	6	—	
Attending withdrawing record and paid (*b*)	4	4	1	0	5	4	2	0
(If record withdrawn on day of trial, the fee out of pocket will be the same as on a verdict.)								
Instructions to Counsel in common matters	3	4	—		3	4	—	
Circular letters	2	0	—		3	6	—	
After the first	1	0	—		1	6	—	
Affidavits, common	4	0	—		6	0	—	

If special—

Drawing, per folio 8d., copying, per folio 4d.

(*a*) No allowance will be made in any case for attending deponent to be sworn to affidavit.

(*b*) No allowance where rule drawn up or judgment signed on withdrawal of plea, except for the payment out of pocket.

(2.) DEFENDANT'S COSTS.

Instructions to appear - - -	3	4	—	6	8	—	
Appearance and notice - - -	8	0	3 0	9	0	3	0
Instructions for pleas - - - -	3	4	—	6	8	—	
Drawing same and copy to deliver, Nunquam indebitatus - - -	4	0	—	5	0	—	
Attending to deliver - - - -	3	4	—	3	4	—	

Instructions for brief, brief and further costs - - - } Same allowance as for plaintiff's costs.

COSTS OF BRINGING IN RECORD PER PROVISO.	Under 20*l.*		Out of pocket.		20*l.* and above.		Out of pocket.	
	s.	*d.*	*s.*	*d.*	*s.*	*d.*	*s.*	*d.*
Entering cause for trial and notice -	9	0	4	0	12	0	5	0
Notice to plaintiff's solicitor to bring in record - - - - - -	2	0	—		3	0	—	
Attending searching if record brought in - - - - - - - -	3	4	—		3	4	—	
Plaintiff's solicitor not having lodged record, making up same - - -	5	0	—		7	6	—	
If special, above 7 folios, per folio -	0	4	—		0	4	—	

ON RULE TO DISCONTINUE.	Under 20*l.*		Out of pocket.		20*l.* and above.		Out of pocket.	
	s.	*d.*	*s.*	*d.*	*s.*	*d.*	*s.*	*d.*
Marked without taxation.								
After appearance and before declaration - - - - - - -	15	8			19	2		
If demand of declaration given, extra -	3	0			4	0		

Fees of Serjeant-at-Mace.

Actions.

	£	s.	d.
Executions not exceeding £10 - - - -	0	7	6
£10 and not exceeding £20, and 6d. on each £1 above £10 - - -	0	7	6
£20 and not exceeding £50, and 3d. on each £1 above £20 - - -	0	12	6
£50 and not exceeding £100, and 3d. on each £2 above £50 - - -	1	0	0
Above £100 - - - - -	1	7	6
Warrant upon leaving execution - - - -	0	2	6
Executing writ of possession - - - -	1	0	0
Commitment warrant (besides mileage) - -	0	7	6

Fees on Verdicts.

Under £20 - - - - - - -	0	4	0
Above £20 - - - - - - -	0	6	0

INDEX.

THE END.

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I cannot too strongly express my obligations to Mr. Biddle, of the Master of the Rolls' Chambers, for his assistance in the preparation of this edition. The whole book has been revised by him; and I have throughout received from him very valuable suggestions. He has also relieved me of much labour by revising and annotating the forms annexed to the rules, and in many other ways.

I wish particularly to notice the Table of Cases, which Mr. Biddle has prepared. The course ordinarily adopted throughout the book is to cite each case with a reference to only one report of it, except where there appeared special reason for referring to another. The Law Reports are commonly cited where the case has appeared in that series. To have mentioned in the body of the work every report of each case would have been a cumbrous and I think an inconvenient plan. On the other hand, many practitioners use series of reports other than those commonly cited in this Book. To meet the difficulty thus arising, the Table of Cases gives a reference to all the reports of each case cited.

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